APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001
(Appropriations Committee)

ELECTED OFFICIALS

AN ACT to provide an appropriation for defraying the expenses of various elected officials, the securities commissioner, the legislative council, and the insurance tax payments to fire departments; to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to the authority of the attorney general to borrow funds to obtain evidence for law enforcement; to amend and reenact section 5-03-01, subsection 3 of section 26.1-01-07.1, subsection 7 of section 49-02-02, sections 53-06.1-12.1, 54-12-17, 54-12-18, and 60-06-06.1 of the North Dakota Century Code, relating to an exemption to wholesale liquor license requirements, the operation of the insurance regulatory trust fund, regulation of public utilities by the public service commission, deposit of the games of chance tax, operation of the attorney general refund fund, and the name of the consumer fraud and antitrust division; and to repeal sections 49-06-18, 49-06-19, 49-06-20, 49-06-21, 49-06-22, and 49-06-23 of the North Dakota Century Code, relating to costs of hearings for purposes of valuing public utility property and the public utility valuation fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income the sums as hereinafter provided to the various elected officials and the securities commissioner for the purpose of defraying the expenses of the various elected officials of the state of North Dakota and the securities commissioner, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

GOVERNOR'S OFFICE

Salaries and wages	$ 1,564,596
Information services	42,387
Operating expenses	323,153
Equipment	9,145
Contingency	13,893
ND-Sask-Man commission	2,000
Yellow-Missouri-Fort Union commission	5,239
Roughrider awards	2,400
Total general fund appropriation	$ 1,962,813

Subdivision 2.

SECRETARY OF STATE

Salaries and wages	$ 1,448,489
Information services	1,194,938

Operating expenses	553,489
Equipment	54,000
Limited liability administration	5,000
Public printing	366,500
Petition review	17,000
Total general fund appropriation	$ 3,639,416

Subdivision 3.

ATTORNEY GENERAL

Salaries and wages	$11,341,664
Information services	515,684
Operating expenses	2,734,586
Equipment	295,743
Grants	2,363,504
Grants to state agencies	1,650,118
Local gaming enforcement grants	1,224,000
Controlled substances board	4,000
Arrest and return of fugitives	34,376
ARC legal fees	91,027
State employee defense	250,000
Gaming commission	20,000
Racing commission	222,421
Litigation fees	418,324
Total all funds	$21,165,447
Less estimated income	9,388,462
Total general fund appropriation	$11,776,985

Subdivision 4.

STATE AUDITOR

Salaries and wages	$ 4,547,666
Information services	116,329
Operating expenses	409,382
Equipment	45,120
Total all funds	$ 5,118,497
Less estimated income	1,843,076
Total general fund appropriation	$ 3,275,421

Subdivision 5.

STATE TREASURER

Salaries and wages	$ 552,085
Information services	32,167
Operating expenses	57,021
Equipment	7,150
Veterans' postwar trust fund	745,670
Total all funds	$ 1,394,093
Less estimated income	5,000
Total general fund appropriation	$ 1,389,093

Subdivision 6.

STATE TAX COMMISSIONER

Salaries and wages	$10,421,404
Information services	1,365,653
Operating expenses	2,251,440
Equipment	82,888

Attorney and expert witness contingency	190,000
City tax administration fees	400,000
Motor fuels tax compliance	150,000
Total all funds	$14,861,385
Less estimated income	150,000
Total general fund appropriation	$14,711,385

Subdivision 7.

LABOR COMMISSIONER

Salaries and wages	$ 580,487
Information services	24,535
Operating expenses	110,313
Equipment	4,200
Total all funds	$ 719,535
Less estimated income	82,080
Total general fund appropriation	$ 637,455

Subdivision 8.

PUBLIC SERVICE COMMISSION

Salaries and wages	$ 4,267,388
Information services	113,286
Operating expenses	5,199,461
Equipment	72,100
Grants to state agencies	20,000
Total all funds	$ 9,672,235
Less estimated income	6,180,697
Total general fund appropriation	$ 3,491,538

Subdivision 9.

AGRICULTURE COMMISSIONER

Salaries and wages	$ 2,401,963
Information services	86,257
Operating expenses	1,450,875
Equipment	19,500
Grants	111,720
Grants to state agencies	450,000
Pride of dakota	150,000
Waterbank program	214,000
Rangeland grasshopper control	50,000
Pesticide disposal	592,235
Ag mediation	1,792,037
Noxious weeds	982,856
Ag in the classroom	25,000
Total all funds	$ 8,326,443
Less estimated income	3,939,663
Total general fund appropriation	$ 4,386,780

Subdivision 10.

INSURANCE COMMISSIONER

Salaries and wages	$ 3,192,202
Information services	83,243
Operating expenses	770,478
Equipment	19,609
Boiler inspection	341,552

Total special funds appropriation	$ 4,407,084

Subdivision 11.

SECURITIES COMMISSIONER

Salaries and wages	$ 521,121
Information services	17,920
Operating expenses	62,051
Equipment	5,600
Total general fund appropriation	$ 606,692
Grand total general fund appropriation H.B. 1001	$46,025,578
Grand total special funds appropriation H.B. 1001	$31,258,762
Grand total all funds H.B. 1001	$77,284,340

SECTION 2. APPROPRIATION - INSURANCE TAX PAYMENTS TO FIRE DEPARTMENTS. There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of $5,262,700, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. INSURANCE TAX PAYMENTS TO FIRE DEPARTMENTS - ADDITIONAL INCOME - APPROPRIATION. All income deposited in the insurance tax distribution fund pursuant to the provisions of House Bill No. 1036, as approved by the fifty-third legislative assembly, in addition to the funds appropriated in section 2 of this Act, is hereby appropriated to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments for the biennium beginning July 1, 1993, and ending June 30, 1995, and may be spent only upon approval of the budget section of the legislative council.

SECTION 4. APPROPRIATION - LEGISLATIVE COUNCIL. Notwithstanding section 49-21-22, there is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $3,000, or so much of the sum as may be necessary, to the legislative council for the purpose of paying per diem for the 1991-93 biennium for legislative members of the regulatory reform review commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 5. REGULATORY REFORM REVIEW COMMISSION EXPENSES - CHARGES TO UTILITY COMPANIES. The public service commission shall charge public utility companies actual costs incurred pursuant to section 4 of this Act plus actual costs associated with the regulatory reform review commission, including expenses of legislative members of the commission for the period ending June 30, 1995, and deposit the moneys collected pursuant to this section in the general fund.

SECTION 6. TRANSFER. On July 1, 1993, the state treasurer shall transfer the unobligated balance of the public utility valuation fund to the general fund in the state treasury. After payment of all obligations of the public utility valuation fund, the state treasurer shall transfer the balance to the general fund in the state treasury.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000, or so much of the sum as may be necessary, to the public service commission for the purpose of defraying the expenses of public utility regulation for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 8. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $45,000, or so much of the sum as may be necessary, to the legislative council for the purpose of defraying the expenses of the legislative members of the regulatory reform review commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 9. LEGISLATIVE INTENT - SECRETARY OF STATE. It is the intent of the legislative assembly that the secretary of state pay no more than seventy-one percent of central indexing system fee collections to counties for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 10. STATE AUDITOR - APPROPRIATION LIMITATION. Of the $3,275,421 appropriated from the general fund to the state auditor in subdivision 4 of section 1 of this Act, $63,000 of this amount is equal to the estimated amount of funds remaining unspent from the general fund appropriation provided to the state auditor for the 1991-93 biennium contained in 1991 Senate Bill No. 2001. Expenditure of funds pursuant to this $63,000 general fund appropriation included in subdivision 4 of section 1 of this Act may not exceed the amount of funds remaining unspent pursuant to the general fund appropriation contained in subdivision 5 of section 1 of 1991 Senate Bill No. 2001.

SECTION 11. INSURANCE REGULATORY TRUST FUND - TRANSFER. Notwithstanding subsection 3 of section 26.1-01-07.1, the state treasurer shall transfer any funds in excess of $1,500,000 in the insurance regulatory trust fund on June 30, 1994, to the general fund.

SECTION 12. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office is hereby authorized to receive and expend any federal or private funds which are hereby appropriated that become available during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 13. FIRE AND TORNADO FUND - ATTORNEY GENERAL. The estimated income included in the appropriation for the attorney general in subdivision 3 of section 1 of this Act includes the sum of $617,522, or so much of the sum as may be necessary, from the state fire and tornado fund, for the purpose of defraying the expenses related to the state fire marshal program.

SECTION 14. LOCAL GAMING ENFORCEMENT GRANTS - ATTORNEY GENERAL. The attorney general, through the state treasurer's office, shall pay, from funds appropriated in the local gaming enforcement grants line item in subdivision 3 of section 1 of this Act, $153,000 per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds for the biennium beginning July 1, 1993, and ending June 30, 1995. The attorney general may make a payment to a city or county pursuant to this section only if the amount owed to a city or county for that quarter is ten dollars or more. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with gaming enforcement within the city or county.

SECTION 15. TRANSFER - GENERAL FUND. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel taxes revenue, collected pursuant to section 57-43.1-02, the sum of $1,025,000 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor

vehicle fuels and special fuels taxes and the administration of the respective tax acts.

SECTION 16. ASSET FORFEITURE FUND - ATTORNEY GENERAL. The sum of $32,485 is available from the asset forfeiture fund for the attorney general as included in estimated income in subdivision 3 of section 1 of this Act.

SECTION 17. BONDING FUND - INSURANCE COMMISSIONER. Subdivision 10 of section 1 of this Act includes the sum of $112,969, or so much of the sum as may be necessary, from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 18. FIRE AND TORNADO FUND - INSURANCE COMMISSIONER. Subdivision 10 of section 1 of this Act includes the sum of $646,996, or so much of the sum as may be necessary, from the state fire and tornado fund to pay fire and tornado administrative expenses and boiler inspection program expenses for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 19. UNSATISFIED JUDGMENT FUND - INSURANCE COMMISSIONER. Subdivision 10 of section 1 of this Act includes the sum of $129,540, or so much of the sum as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment administrative expenses for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 20. PETROLEUM TANK RELEASE COMPENSATION FUND - INSURANCE COMMISSIONER. The sum of $182,571, or so much of the sum as may be necessary, included in subdivision 10 of section 1 of this Act, is from the petroleum tank release compensation fund for petroleum tank release compensation fund administrative expenses for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 21. BONDING FUND - ATTORNEY GENERAL. The appropriation in subdivision 3 of section 1 of this Act includes up to $250,000, or so much of the sum as may be necessary, from the state bonding fund to the attorney general for the purpose of providing state employee defense services pursuant to section 26.1-21-10.2. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1993, and ending June 30, 1995, to approve the expenditure of the funds from the state bonding fund appropriated in subdivision 3 of section 1 of this Act to the extent necessary and based upon applications by the attorney general. Funds expended by the attorney general for state employee defense must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-fourth legislative assembly.

SECTION 22. COLLECTIONS - PUBLIC SERVICE COMMISSION. Notwithstanding any other provisions of law, up to $26,681 in funds generated by the public service commission due to oil and gas meter monitoring responsibilities for the period beginning July 1, 1993, and ending June 30, 1995, is included in subdivision 8 of section 1 of this Act as estimated income. Any amounts in excess of $26,681 shall be deposited in the general fund.

SECTION 23. APPROPRIATION - ATTORNEY GENERAL. Subdivision 3 of section 1 of this Act includes the appropriation of up to $15,000 in revenues collected from fees

charged for gaming law and administrative rules manuals published by the attorney general for the period beginning July 1, 1993, and ending June 30, 1995.

SECTION 24. POLITICAL SUBDIVISION AUDIT FEES. The estimated income line item in subdivision 4 of section 1 of this Act includes $1,245,390 from political subdivision audit fees. Any amounts in excess of $1,245,390 shall remain in the state auditor operating account.

SECTION 25. INCOME AUTHORIZATION - STATE TREASURER. The state treasurer is authorized, as included in the appropriation for the state treasurer in subdivision 5 of section 1 of this Act, to administer the sale of alcohol beverage decals for liquor and beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler.

SECTION 26. AGRICULTURE COMMISSIONER - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in subdivision 9 of section 1 of this Act includes the sum of $1,235,000, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of defraying pesticide and noxious weeds program costs, of which $650,000 is for the pesticide program and $585,000 is for the noxious weeds program, for the biennium beginning July 1, 1993, and ending June 30, 1995. Of the $585,000 provided for the noxious weeds program, $50,000 of this amount is equal to the estimated amount of funds remaining unspent from the appropriation provided for the noxious weeds program for the 1991-93 biennium contained in 1991 Senate Bill No. 2451. Expenditure of funds pursuant to this $50,000 included in the estimated income line item in subdivision 9 of section 1 of this Act may not exceed the amount of funds remaining unspent pursuant to the appropriation contained in 1991 Senate Bill No. 2451. Of the $650,000 provided for the pesticide program, $50,000 of this amount is equal to the additional estimated amount of funds remaining unspent in addition to the amounts appropriated in Senate Bill No. 2387 from the appropriation provided for the pesticide program for the 1991-93 biennium contained in 1991 Senate Bill No. 2025. Expenditure of funds pursuant to this $50,000 included in the estimated income line item in subdivision 9 of section 1 of this Act may not exceed the amount of funds remaining unspent, pursuant to the appropriation contained in 1991 Senate Bill No. 2025 considering the amounts appropriated in Senate Bill No. 2387.

SECTION 27. AMENDMENT. Section 5-03-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-01. State wholesale license required - Qualifications - Penalty - Exception. Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state treasurer. ~~That~~ A lender who acquires an inventory of beer or liquor by reason of foreclosure of a security interest in the inventory is exempt from obtaining a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No ~~such~~ license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.

2. The state treasurer may require the applicant to set forth other information necessary to enable the state treasurer to determine if a license should be granted.

3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.

4. The applicant may not have any financial interest in any retail alcoholic beverage business.

5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

Any person distributing alcoholic beverages in this state without compliance with ~~the provisions of~~ this title is guilty of a class B misdemeanor.

SECTION 28. AMENDMENT. Subsection 3 of section 26.1-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Any cash balance in the insurance regulatory trust fund after all current biennium expenditures are met must be carried forward in the insurance regulatory trust fund for the next succeeding biennium, except when the balance at the end of the biennium exceeds ~~two~~ one million five hundred thousand dollars, any excess will be transferred to the general fund in the state treasury.

[1] **SECTION 29. AMENDMENT.** Subsection 7 of section 49-02-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on rate increase ~~application hearings, investigations, and proceedings relating to~~ applications filed by gas~~,~~ or electric~~, or telecommunications~~ public utilities. The expense of any hearings~~,~~ or investigations~~, and proceedings,~~ and the ~~compensation and~~ actual expenses of any employees of the commission while engaged upon any ~~such~~ hearing~~,~~ or investigation~~, or proceeding, shall~~ must upon the order of the

[1] NOTE: Section 49-02-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

commission be paid by the public utility ~~being investigated or~~ involved ~~in such hearing or proceeding~~. The commission shall ascertain ~~such~~ the costs and expenditures. After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing~~,~~ or investigation~~, or proceeding,~~ or at the conclusion thereof, as the commission ~~shall determine~~ determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility~~, within ten days after receipt,~~ shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment ~~shall~~ draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection ~~shall~~ must be ~~paid into~~ deposited in the general fund ~~of~~ in the state treasury.

SECTION 30. AMENDMENT. Section 53-06.1-12.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.1. ~~Allocation of games~~ Games of chance tax ~~- Appropriation~~. The state treasurer~~, at the direction of the attorney general,~~ shall ~~pay one hundred seventy thousand dollars per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with enforcement of this chapter within the city or county. In addition, two hundred thousand dollars per biennium, must be deposited in the attorney general's operating fund and must be used only for the enforcement of gaming as appropriated. Any remaining~~ deposit all taxes collected under this chapter ~~must be deposited by the state treasurer~~ in the general fund in the state treasury.

SECTION 31. AMENDMENT. Section 54-12-17 of the North Dakota Century Code is amended and reenacted as follows:

54-12-17. Consumer ~~fraud~~ protection and antitrust division. A consumer ~~fraud~~ protection and antitrust division is created under the attorney general. This division consists of a director and such other personnel as may be appointed by the attorney general. ~~It~~ The division shall act to enforce the consumer fraud laws and act with regard to the use or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, and shall make full investigation of such activities and maintain adequate facilities for filing reports, examining persons and merchandise in regard thereto, and storing impounded books, records, accounts, papers, and samples of merchandise relating to same. The division shall ~~further~~ cooperate with other governmental agencies, national, state, or local, and with all peace officers of the state in regard thereto. The division ~~shall~~ also shall investigate antitrust violations and enforce antitrust laws.

SECTION 32. AMENDMENT. Section 54-12-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-18. Special fund established - Continuing appropriation. A special fund is established in the state treasury and designated as the attorney general refund fund. The attorney general shall deposit all moneys recovered by the consumer ~~fraud~~ protection division for refunds to consumers in cases where persons or parties are found to have violated the consumer fraud laws, all costs, expenses, attorney's fees, and civil penalties collected by the division regarding any consumer ~~fraud~~ protection or antitrust matter, ~~and~~ all cash deposit bonds paid by applicants for a transient merchant's license who do not provide a surety bond, and all funds and fees collected by the gaming section for licensing tribal gaming and for the investigation of gaming employees, applicants, organizations, manufacturers, distributors, or tribes involved in state or tribal gaming. The moneys in the fund are appropriated, as necessary, for the following purposes:

1. To provide refunds of moneys recovered by the consumer ~~fraud~~ protection and antitrust division on behalf of consumers;
2. To pay valid claims against cash deposit bonds posted by transient merchant licensees;
3. To refund, upon expiration of the two-year period after the expiration of the transient merchant's license, the balance of any cash deposit bond remaining after the payment of valid claims;
4. To pay costs, expenses, and attorney's fees and salaries incurred in the operation of the consumer ~~fraud~~ protection division; and
5. To pay the actual costs of ~~a~~ background ~~investigation of applicants for a gaming employee work permit~~ investigations, licensing, and enforcement of gaming in the state or pursuant to Indian gaming compacts.

At the end of each fiscal year any moneys in the fund in excess of the amounts required for subsections 1, 2, 3, and 5 must be deposited in the general fund. The attorney general, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for use of the attorney general refund fund, particularly with respect to expenditures under subsection 4.

SECTION 33. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Loans for law enforcement activities. The attorney general may obtain unsecured loans from any financial institution in this state for the purpose of conducting the activities listed in subsection 1 of section 54-12-14. Any funds obtained under this section must be repaid at the end of each biennium and are not subject to appropriation limitations.

SECTION 34. AMENDMENT. Section 60-06-06.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-06-06.1. Determination - Appropriation. Any party may petition the public service commission to determine rights governed under this chapter. The commission shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The commission shall conduct each hearing required under this section in the county where the right of way at issue is located. The parties to the determination proceeding shall pay the expense of the

proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered mail. Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the ~~public utility valuation revolving~~ general fund in the state treasury. ~~All moneys transferred or deposited in the public utility valuation revolving fund for the payment of costs and expenses incurred under this section are hereby appropriated. These moneys are not subject to section 54-44.1-11.~~

SECTION 35. REPEAL. Sections 49-06-18, 49-06-19, 49-06-20, 49-06-21, and 49-06-22 of the North Dakota Century Code and section 49-06-23 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 2

HOUSE BILL NO. 1002
(Appropriations Committee)

HUMAN SERVICES

AN ACT to provide an appropriation for defraying the expenses of the department of human services, an appropriation from the lands and minerals trust fund to the common schools trust fund, an appropriation from the revolving loan fund maintained in the Bank of North Dakota, and an appropriation from the state aid distribution fund; to provide for the transfer of appropriations between agencies and institutions and to require budget section approval of alternative programs at the state hospital; to create and enact a new subsection to section 23-01-03, a new subsection to section 23-17.2-02, a new subsection to section 50-06-05.1, a new section to chapter 50-06.2, and a new chapter to title 50 of the North Dakota Century Code, relating to the duties of the North Dakota health council, to the definition of long-term care facility, to the certificate of need program, to the lease of developmental center facilities or properties, to payment of services by county and state matching funds, and to aid to aged, blind, and disabled persons; to create and enact section 2 to House Bill No. 1274 as approved by the fifty-third legislative assembly, relating to residential care and services for the developmentally disabled and to provide an expiration date for that Act; to amend and reenact subsection 4 of section 14-09-08.4, section 14-09-08.8, subsection 7 of section 23-17.2-02, sections 23-17.2-03, and 50-01-01 of the North Dakota Century Code and section 4 of chapter 561 of the 1991 Session Laws of North Dakota, relating to amendment of support orders to meet the medical needs of children, to the definition of health care facility, to the scope of the certificate of need program, to state assistance for county poor relief costs, to matching funds for senior citizen services, and to extending an appropriation for the developmental center; to repeal sections 50-01-09.2 and 50-06-14.2 of the North Dakota Century Code, relating to state assistance for county poor relief costs and to rates payable to basic care facilities to provide for a review of the clubhouse project; to provide legislative intent regarding developmentally disabled provider salary increases, senior citizens mill levy match funding, a legislative council study of human service center funding formula, and establishment of a management information system for service payments for elderly and disabled by the department; to require the department of human services to develop basic care ratesetting methodology; to provide legislative intent regarding state hospital income; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

EXECUTIVE DIRECTOR

Salaries and wages	$ 248,400
Operating expenses	39,096
Total all funds	$ 287,496
Less estimated income	80,258
Total general fund appropriation	$ 207,238

Subdivision 2.

MANAGERIAL SUPPORT

Salaries and wages	$ 5,795,088
Information services	1,097,356
Operating expenses	4,361,696
Equipment	44,746
Developmentally disabled facility loan fund	1,840,956
Total all funds	$ 13,139,842
Less estimated income	7,830,810
Total general fund appropriation	$ 5,309,032

Subdivision 3.

ECONOMIC ASSISTANCE

Salaries and wages	$ 3,905,071
Information services	5,819,080
Operating expenses	11,315,445
Equipment	48,735
Grants	137,148,559
Total all funds	$158,236,890
Less estimated income	138,334,844
Total general fund appropriation	$ 19,902,046

Subdivision 4.

MEDICAL ASSISTANCE

Salaries and wages	$ 2,513,389
Information services	1,668,932
Operating expenses	2,269,009
Equipment	8,000
Grants	496,439,056
Total all funds	$502,898,386
Less estimated income	366,602,003
Total general fund appropriation	$136,296,383

Subdivision 5.

VOCATIONAL REHABILITATION

Salaries and wages	$ 3,085,227
Information services	362,174
Operating expenses	1,393,075
Equipment	184,082
Grants	11,098,660
Total all funds	$ 16,123,218
Less estimated income	14,237,576
Total general fund appropriation	$ 1,885,642

Subdivision 6.

FIELD SERVICES AND PROGRAM DEVELOPMENT

Salaries and wages	$ 4,978,530
Information services	949,647
Operating expenses	9,046,217
State hospital downsizing funding pool	2,000,000
Equipment	157,896
Grants	56,343,369
Total all funds	$ 73,475,659
Less estimated income	45,747,985
Total general fund appropriation	$ 27,727,674

Subdivision 7.

HUMAN SERVICE CENTERS

Salaries and wages	$ 54,247,424
Information services	558,224
Operating expenses	10,756,601
Equipment	409,826
Capital improvements	347,750
Grants	8,941,540
Total all funds	$ 75,261,365
Less estimated income	35,054,002
Total general fund appropriation	$ 40,207,363

Subdivision 8.

STATE HOSPITAL

Salaries and wages	$ 41,947,820
Information services	832,878
Operating expenses	7,018,682
Equipment	287,621
Capital improvements	501,352
Total all funds	$ 50,588,353
Less estimated income	17,675,954
Total general fund appropriation	$ 32,912,399

Subdivision 9.

DEVELOPMENTAL CENTER

Salaries and wages	$ 31,927,887
Information services	381,574
Operating expenses	8,215,554
Equipment	108,087
Capital improvements	40,000
Total all funds	$ 40,673,102
Less estimated income	28,470,313
Total general fund appropriation	$ 12,202,789

Subdivision 10.

DEVELOPMENTALLY DISABLED COUNCIL AND GOVERNOR'S COUNCIL

Salaries and wages	$ 223,579
Information services	4,910
Operating expenses	167,757
Equipment	1,300
Grants	782,482
Total all funds	$ 1,180,028
Less estimated income	1,140,817
Total general fund appropriation	$ 39,211

Grand total general fund appropriation H.B. 1002	$276,689,777
Grand total special fund appropriation H.B. 1002	$655,374,562
Grand total all funds H.B. 1002	$932,064,339

SECTION 2. LANDS AND MINERALS TRUST FUND. The amount of $1,840,956, or so much of the sum as may be necessary, as appropriated in the developmentally disabled facility loan fund line item in subdivision 2 of section 1 of this Act may be spent by the department of human services from the lands and minerals trust fund for the purpose of making payments of principal and interest to the common schools trust fund on any loans made from it pursuant to the developmentally disabled loan fund program nos. 2 and 3 for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND. There may be spent by the department of human services, on or before June 1, 1995, from the cash balance of, and any payments deposited in, the revolving loan fund created under section 6-09.6-01, the sum of $950,000, or so much of the sum as may be necessary, which is appropriated in subdivision 2 of section 1 of this Act.

[1] **SECTION 4. TRANSFER - HUMAN SERVICE CENTER FUNDING.** Upon approval of the budget section, the director of the department of human services may transfer appropriation authority between agencies and institutions included in subdivisions 1 through 10 of section 1 of this Act. Funding for human services center programs must be used for programs in the manner they were prioritized in documents filed with the fifty-third legislative assembly on April 24, 1993, except as otherwise provided in this section. Upon approval from the budget section, the department of human services may fund the programs in a different manner. Each member of the budget section must be provided information and justification for any proposed changes at least one week before a budget section meeting.

SECTION 5. MEDICAID FUNDS - TRANSFER. Upon receipt of medicaid funds for expenditure at the state hospital, the human service centers, and the developmental center, the department of human services may transfer the funds to the state hospital, the human service centers, and the developmental center and then spend them pursuant to the appropriation of such funds in the state hospital, the human service centers, and the developmental center appropriations contained in subdivisions 7, 8, and 9 of section 1 of this Act.

SECTION 6. CORRELATION OF RESOURCES FOR DEPARTMENTAL CLIENTS - STATE HOSPITAL ALTERNATIVE USES - BUDGET SECTION APPROVAL. The director of the department of human services may transfer, subject to budget section approval, appropriation authority and authorized positions between agencies and institutions included in subdivisions 7, 8, and 9 of section 1 of this Act to correlate fiscal and staff resources with the flow of institutional residents and human service center clients between community-based programs and the institutions. The department of human services, during the 1993-95 biennium, shall review the financial and other impacts of alternative programs at the state hospital, including the development of a psychiatric skilled nursing facility and, subject to budget section approval, shall begin such optional uses the department determines appropriate.

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[1] NOTE: Section 4 was vetoed by the Governor, see chapter 648.

NOTE: Attorney General's Opinion 93-05 dated May 25, 1993, concludes that the Governor's veto of the first sentence of Section 4 of House Bill No. 1002 was valid but that the veto of the remainder of that section is "void and has no effect."

SECTION 7. AMENDMENT. Subsection 4 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

4. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

SECTION 8. AMENDMENT. Section 14-09-08.8 of the North Dakota Century Code is amended and reenacted as follows:

[2] **14-09-08.8. Motion for amendment of ~~amount for~~ child support** order **- How made.** Upon a determination by a child support agency, made under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4, that it may or must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.

SECTION 9. A new subsection to section 23-01-03 of the North Dakota Century Code is created and enacted as follows:

Regulate the expansion of long-term care facilities and services through the certificate of need process under chapter 23-17.2.

[3] **SECTION 10. AMENDMENT.** Subsection 7 of section 23-17.2-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Health care facility" means ~~those~~ a health care ~~facilities~~ facility licensed by the department or certified by the department under the federal Social Security Act as amended including, but not limited to, hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but not including clinical laboratories ~~which~~ that under title XVIII of the federal Social Security Act meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. The term includes a long-term care facility.

[4] **SECTION 11.** A new subsection to section 23-17.2-02 of the North Dakota Century Code is created and enacted as follows:

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[2] NOTE: Section 14-09-08.8 was also amended by section 9 of House Bill No. 1181, chapter 152.

[3] NOTE: Section 23-17.2-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

[4] NOTE: Section 23-17.2-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

"Long-term care facility" means any nursing facility as defined in 42 U.S.C. 1396r(a), or basic care facility as defined in section 23-09.3-01. The term does not include a facility, as defined by subsection 2 of section 25-01.2-02, which provides services to developmentally disabled persons.

SECTION 12. AMENDMENT. Section 23-17.2-03 of the North Dakota Century Code is amended and reenacted as follows:

23-17.2-03. Scope of coverage of certificate of need program. The certificate of need program required under this chapter provides for the following:

1. The department, pursuant to this chapter and rules of the health council, shall review proposals subject to this chapter and shall approve, disapprove, or revoke the certificate of need, as appropriate. The certificate of need program applies to:

   a. The obligation by or on behalf of a health care facility of any capital expenditure of seven hundred fifty thousand dollars or more (other than to acquire an existing facility). The capital expenditure must include the costs of designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment.

   b. The addition or expansion of a health service by or on behalf of a health care facility beyond that which was offered within the previous twelve-month period before the month in which the health service would be offered which is associated with a capital expenditure and entails an annual operating cost of at least three hundred thousand dollars; or the termination of a health service effected by a capital expenditure of seven hundred fifty thousand dollars or more.

   c. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility the capital expenditure for which is five hundred thousand dollars or more or the annual operating cost for which is three hundred thousand dollars or more. In determining whether major medical equipment costs more than five hundred thousand dollars, the cost of designs, plans, working drawings, specifications, and other activities essential to placement, to acquiring the equipment and making it operational must be included. If the equipment is acquired at less than fair market value, the term "cost" includes the fair market value.

   d. The acquisition by any person of major medical equipment not owned by or located in a health care facility the capital expenditure for which is five hundred thousand dollars or more or the annual operating cost for which is three hundred thousand dollars or more, if the department finds that the equipment will be used primarily to provide services to persons who are admitted patients in a health care facility. This does not include use of equipment on a temporary basis as in the case of a natural disaster, a major accident, or equipment failure.

   e. The obligation of a capital expenditure of seven hundred fifty thousand dollars or more by any person to acquire an existing health care facility if a notice of intent is not received at least thirty

days prior to entering into a contract for the obligation or the department finds that the services or bed capacity of the facility will be changed.

f. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if such acquisition would have been subject to review if purchased. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would have been subject to review.

g. Any expansion of services by or of the physical plant of a long-term care facility or any conversion of beds from any other licensure category to any category of long term care.

2. Upon a decision by the health council to issue a certificate of need, the certificate ~~shall~~ must specify the maximum amount of capital expenditures which may be obligated under ~~such~~ the certificate.

3. The health council shall prescribe by rule the extent to which a project authorized by a certificate of need ~~shall be~~ is subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

~~4. Any state agency construction project subject to the provisions of this chapter, the determination of need established through legislative procedure, finalized by appropriation, must be accepted by the health council without any formal reviews.~~

SECTION 13. Section 2 to House Bill No. 1274, as approved by the fifty-third legislative assembly, is created and enacted to read as follows:

SECTION 2. EXPIRATION DATE. This Act expires on June 30, 1995.

SECTION 14. AMENDMENT. Section 50-01-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-01-01. County obligated to support poor - Eligibility for assistance - Transfer of property as security for assistance. Within the limits of the county human services appropriation therefor, ~~and utilizing reimbursement under section 50-01-09.2,~~ each county in this state is obligated, upon receipt of a written application on a form prescribed by the department of human services, to relieve and support persons who are residents of the county and who are in need of poor relief. To be eligible for such relief, the applicant:

1. May not at any time before or after making application for county poor relief have made an assignment or transfer of property for the purpose of rendering ~~himself~~ the applicant eligible for assistance under this chapter.

2. Shall comply with the written eligibility standards for county poor relief established by the county social service board. A copy of the written standards must be available upon request. Pursuant to this requirement, the ownership of real or personal property by an applicant for county poor relief, or by the spouse of ~~such~~ the applicant, either individually or

jointly, or of insurance on the life of the applicant does not preclude the granting of ~~such~~ the relief if the applicant is without funds for ~~his~~ the applicant's support. However, as a condition to the granting of county poor relief, the applicant may be required to transfer such property in trust by appropriate instrument as security for relief the applicant may thereafter receive, unless the property consists of one of the following:

a. A homestead.

b. A life insurance policy having a cash surrender value of less than three hundred dollars.

c. Personal property of a value less than three hundred dollars, not including household goods, wearing apparel, and personal effects, such as money.

d. Property selected by the applicant having a value of less than three hundred dollars.

e. Real or personal property held in trust for the applicant by the federal government.

f. Real or personal property on which the taking of security may be prohibited through legislation enacted by the Congress of the United States.

SECTION 15. A new subsection to section 50-06-05.1 of the North Dakota Century Code is created and enacted as follows:

With the approval of the governor, to lease or transfer use of any part of the developmental center facilities or properties, located in section thirteen, township one hundred fifty-seven north, range fifty-three west, located in Walsh County, North Dakota, to the federal government, or any public or private agency, organization, or business enterprise, or any worthy undertaking, under the following provisions:

a. The department determines that the facility or property is not needed to serve any present or reasonably foreseeable need of the developmental center.

b. The transaction is exempt from the provisions of section 50-06-06.6.

c. The term of any lease may not exceed ninety-nine years.

d. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.

e. Any funds realized by any transaction must be deposited in the state's general fund.

SECTION 16. A new section to chapter 50-06.2 of the North Dakota Century Code is created and enacted as follows:

County share of service payments to elderly and disabled. Each county in this state shall reimburse the department of human services for amounts expended for service payments to the elderly and disabled in that county in excess of the amount provided by the federal government, in the amount of five percent.

SECTION 17. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.

2. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.

3. "Basic care facility" means a facility defined in section 23-09.3-01 which is not owned or operated by the state.

4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

5. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.

6. "County agency" means the county social service board.

7. "Department" means the department of human services.

8. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

9. "Eligible beneficiary" means a resident of this state who:

   a. (1) Is aged; or

      (2) Is at least eighteen years of age and is disabled or blind;

   b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that a person who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before the effective date of this section is not ineligible because that person is not eligible to receive benefits under title XIX;

   c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:

      (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a

licensed adult family foster care home or a licensed basic care facility, or

(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

d. Is determined to be eligible pursuant to rules adopted by the department.

10. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more persons who are not related to the proprietor.

11. "Living independently" includes living in congregate housing. The term does not include living in an institution.

12. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.

13. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.

14. "Would be eligible to receive the cash benefits except for income" refers to a person whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the person would receive if the person had no income, plus forty-five dollars.

Powers and duties of the department. The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct county agencies in the administration of aid to vulnerable aged, blind, and disabled persons.

2. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary adult family foster care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care provided at rates determined by the department.

3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department.

4. Pay qualified service providers at rates determined by the department, within the limits of legislative appropriation, for the provision of the following services provided to an eligible beneficiary to the extent that the eligible beneficiary lacks income sufficient to meet the cost of these services:

a. Homemaker services;

b. Chore services;

c. Respite care;

d. Home health aide services;

e. Case management;

f. Family home care;

g. Personal attendant care;

h. Adult family foster care;

i. Adaptive assessment; and

j. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.

5. Establish, maintain, and ensure the enforcement of standards for congregate housing as may be appropriate to the needs of the residents of congregate housing who are receiving services under this chapter. The standards must govern matters such as admission policy, safety, sanitation, and protection of civil rights.

6. Establish an individualized care rate for each eligible beneficiary receiving adult family foster care services or assisted living services.

7. Issue payment to basic facilities and adult family foster care facilities for services provided to an eligible beneficiary.

8. Take action and give directions necessary to implement this chapter.

Powers and duties of county agencies. Each county agency shall:

1. Administer aid to aged, blind, and disabled persons at the county level under the direction and supervision of the department, pursuant to state requirements.

2. Provide the services described in this chapter. The county agency may contract with a qualified service provider in its provision of its services.

3. Determine eligibility for benefits under this chapter and periodically redetermine eligibility of persons receiving benefits pursuant to this chapter.

4. Review the circumstances of congregate housing for residents receiving services under this chapter which may exist or may be established in the county and certify to the department that each congregate housing facility conforms to standards contained in rules adopted by the department.

5. Provide case management services to eligible beneficiaries.

6. Provide assessments to eligible beneficiaries and to applicants, where necessary.

7. Conduct initial and ongoing functional assessments of applicants in cooperation with basic care facilities.

8. Submit an annual budget to the board of county commissioners containing an estimate and supporting data, setting forth the county funds needed to carry out this chapter.

9. Cooperate with any other county agency to assure the conduct of initial and ongoing functional assessments and determinations of eligibility with respect to any applicant or eligible beneficiary who is physically present in a county other than the county in which the applicant or eligible beneficiary is a resident for purposes of chapter 50-02.

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

Applicant's or guardian's duty to establish eligibility. The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, and financial eligibility for each month for which benefits are sought.

Appropriation of county funds - Reimbursement by department - Reimbursement by county agency. The board of county commissioners of each county annually shall appropriate and make available to the human services fund an amount sufficient to pay the county's share of the cost of supplements provided and expenses of administration of this chapter. Upon certification of the costs of administration by each county, the department shall reimburse each county for one-half of the county's costs of administration. Upon claim being made by the department, the county agency shall reimburse the department for fifty percent the first year of the 1993-95 biennium and thirty percent thereafter of the cost of supplementing the income of any eligible beneficiary who is a resident of the county for purposes of chapter 50-02.

Residency. For purposes of this chapter:

1. A person is a resident of this state if:

   a. The person is not living in an institution and is living in this state:

      (1) With intent to remain in this state permanently or for an indefinite period; or

      (2) Without intent if the person is incapable of stating intent.

   b. The person is living in an institution outside this state and was receiving a benefit under chapter 50-01 upon the effective date of this Act.

c. The person was placed in an out-of-state institution by a county agency or the department while the person was incapable of indicating intent.

d. The person is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. A person placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the person and the person's family constitutes arranging or making a state placement. However, the following actions do not constitute state placement:

(1) Providing basic information about this chapter and information about the availability of this chapter; or

(2) Assisting a person in locating an institution in this state, if the person is capable of indicating intent and independently decides to move.

2. A person who is a resident of this state is a resident of the county in which the person is a resident for purposes of chapter 50-02.

SECTION 18. AMENDMENT. Section 4 of chapter 561 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 4. PROCEEDS - APPROPRIATION. The proceeds from the sale of land at the ~~state~~ developmental center at Grafton must be deposited in the lands and minerals trust fund. There is hereby appropriated $200,000, or so much thereof as may be necessary, from the lands and minerals trust fund, to the department of human services for capital improvements or demolition of existing buildings at the ~~state~~ developmental center at Grafton for the ~~biennium~~ period beginning July 1, 1991, and ending June 30, ~~1993~~ 1995.

SECTION 19. DEPARTMENT OF HUMAN SERVICES TO DEVELOP BASIC CARE FACILITY RATESETTING METHODOLOGY. The department of human services shall develop a ratesetting methodology that provides for rates for all residents of basic care facilities. The methodology may not provide for different rates for similarly situated residents because of the source of payment for any resident's care. The department shall consult with representatives of the basic care industry in this state in developing the ratesetting methodology. Beginning July 1, 1995, the department shall establish rates for all residents of basic care facilities in accordance with the ratesetting methodology developed by the department. After June 30, 1995, no agency of the state or any political subdivision may make payments to a basic care facility that does not set rates at the levels established by the department.

SECTION 20. REPORT TO LEGISLATIVE COUNCIL. No later than July 1, 1994, the department of human services shall report to the legislative council or an interim committee designated by the legislative council on the development of the ratesetting methodology required by section 19 of this Act. The report may include any legislation recommended by the department as necessary or appropriate to the establishment of the ratesetting methodology.

SECTION 21. CLUBHOUSE MODEL - DEPARTMENT REVIEW - REPORT TO LEGISLATIVE COUNCIL. The department of human services during the 1993-95 biennium shall conduct

or contract for a review of the clubhouse project in Minot to determine the effectiveness of the program. By July 1, 1994, the department shall report to the legislative council, or a committee designated by the legislative council, on the effectiveness of the program and provide recommendations regarding the continuation or expansion of funding for the clubhouse project for the 1995-97 biennium.

SECTION 22. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES PROVIDER SALARY INCREASES. It is the intent of the legislative assembly that community developmental disabilities provider agencies provide, to the extent possible, employee salary increases each year of the 1993-95 biennium similar to state employee salary increases.

SECTION 23. SENIOR CITIZENS MILL LEVY MATCH PROGRAM FUNDING. The amount of $288,000, or so much of the sum as is necessary, included in the estimated income line item in subdivision 6 of section 1 of this Act, is to be spent by the department of human services from the state aid distribution fund during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 24. HUMAN SERVICE CENTER FUNDING FORMULA - REPORT TO LEGISLATIVE COUNCIL. The department of human services shall, during the 1993-95 biennium, study and develop alternatives for a formula to allocate funding to human service centers. It shall periodically report to the Legislative Council or its designated committee on its findings and recommendations.

SECTION 25. MANAGEMENT INFORMATION SYSTEM - SERVICE PAYMENTS FOR THE ELDERLY AND DISABLED. The department of human services shall, during the 1993-95 biennium, develop a management information system to accumulate information for presentation to the members of the fifty-fourth legislative assembly regarding the costs and utilization of the service payments to the elderly and disabled program. The information developed must include client utilization, length of stay on the program, cost of services provided, and reasons for cases closed.

SECTION 26. LEGISLATIVE INTENT - STATE HOSPITAL INCOME - MEDICAID GRANTS. It is the intent of the legislative assembly that in the event the department of human services projects a deficiency appropriation relating to state hospital income or medicaid grant funding it report any anticipated deficiencies to the budget section and seek its approval before it continues to spend at a level which would require a request for a general fund deficiency appropriation from the next legislative assembly.

SECTION 27. REPEAL. Section 50-01-09.2 of the North Dakota Century Code is repealed.

SECTION 28. REPEAL. Section 50-06-14.2 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Section 16 of this Act becomes effective on January 1, 1994. Sections 17 and 27 of this Act become effective January 1, 1995. Section 28 of this Act becomes effective July 1, 1995.

SECTION 30. EMERGENCY. Sections 9, 10, 11, and 12 of this Act are declared to be an emergency measure.

Approved May 5, 1993
Filed May 6, 1993

CHAPTER 3

HOUSE BILL NO. 1003
(Appropriations Committee)

PUBLIC INSTRUCTION

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, the school for the blind, and the state library; to provide exemptions from the provisions of section 54-44.1-11; to provide for an appropriation of funds from the displaced homemaker fund; to provide an appropriation for a legislative council study; to provide for the contingent distribution of a separate and additional per student payment; to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to cooperating school districts; and to amend and reenact section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota, sections 15-27.3-19, 15-27.6-10, and 15-38-17 as amended by section 11 of Senate Bill No. 2418, as approved by the fifty-third legislative assembly, sections 15-40.1-06, 15-40.1-07, 15-40.1-08, 15-40.1-09, 15-40.1-16, 15-40.1-18, and 15-40.2-04 of the North Dakota Century Code, relating to the foundation aid program, appointments to the education standards and practices board and the administrator's professional practices board, the expiration date concerning withdrawals from special reserve funds, school district reorganization, per student payments, and transportation aid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of public instruction, the school for the deaf, and the state library for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	$ 8,904,389
Information services	688,946
Operating expenses	5,170,554
Equipment	345,505
Capital improvements	35,557
Geographic education	50,000
Grants - foundation aid and transportation	396,519,892
Grants - tuition apportionment	46,017,000

[1] NOTE: The line item in section 1 entitled "Grants - vocational and technical education" was vetoed by the Governor, see chapter 649.

Grants - special education	46,577,495
Grants - governor's school	125,000
Grants - other grants	91,744,013
Grants - vocational and technical education	240,000
Electronic media	360,000
School district restructuring	3,266,375
Telecommunications	3,000,000
Teacher centers	200,000
LEAD	184,000
Grants to state agencies	1,160,592
Total all funds	$604,589,318
Less estimated income	159,843,094
Total general fund appropriation	$444,746,224

Subdivision 2.

STATE LIBRARY

Salaries and wages	$ 1,614,325
Information services	78,289
Operating expenses	889,098
Equipment	22,500
Multitype library authority	50,000
Talking book program	235,271
Grants to state agencies	68,000
Grants	893,000
Total all funds	$ 3,850,483
Less estimated income	1,138,873
Total general fund appropriation	$ 2,711,610

Subdivision 3.

SCHOOL FOR THE DEAF

Salaries and wages	$ 3,470,870
Information services	47,025
Operating expenses	802,536
Equipment	58,623
Capital improvements	27,950
Total all funds	$ 4,407,004
Less estimated income	469,688
Total general fund appropriation	$ 3,937,316

Subdivision 4.

SCHOOL FOR THE BLIND

Salaries and wages	$ 2,271,017
Information services	4,950
Operating expenses	465,000
Equipment	20,000
Capital improvements	20,000
Total all funds	$ 2,780,967
Less estimated income	292,471
Total general fund appropriation	$ 2,488,496

Grand total general fund appropriation H.B. 1003	$454,058,646
Grand total special funds appropriation H.B. 1003	$161,804,126
Grand total all funds H.B. 1003	$615,862,772

SECTION 2. INTENT. It is the intent of the legislative assembly that the sum of $46,017,000, or such greater or lesser sums as become available, included in the grants-tuition apportionment and estimated income line items in subdivision 1 of section 1 of this Act, be distributed by the office of management and budget out of any moneys in the state tuition fund in the state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and chapter 15-44 for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. DISPLACED HOMEMAKER FUND. The amount of $250,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is from the displaced homemaker fund for the purpose of providing services for displaced homemakers as provided in chapter 14-06.1 for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. APPROPRIATION. The line item entitled grants in subdivision 2 of section 1 of this Act includes $893,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1994.

SECTION 5. EXEMPTION. The electronic media line item, authorized for the 1991-93 biennium, is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation shall be available for electronic media during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the residential services currently provided at the school for the blind are to be discontinued by July 1, 1994, and that any cost savings from the elimination of residential services during the second year of the biennium beginning July 1, 1993, and ending June 30, 1995, are to be used to enhance the outreach services provided by the school.

SECTION 7. LEGISLATIVE INTENT - BLIND SCHOOL RENTAL. It is the intent of the legislative assembly that the school for the blind pursue renting any of its available facilities to the university of North Dakota and that any proceeds from the rental charges be deposited in the state general fund.

SECTION 8. INTENT - SCHOOL CONSORTIUMS - CONTINGENT APPROPRIATION. Of the $3,266,375 included in the school district restructuring line item in subdivision 1, $400,000 is for grants to be distributed on a competitive basis for consortiums that received planning grants during 1992-93. Up to another $125,000 may be used for grants during the 1993-95 biennium on a competitive basis if funding is available from unspent amounts for student payments resulting from fewer than estimated consortiums. It is the intent of the legislative assembly that any unspent student payment amounts over $125,000 be transferred to the foundation aid line item and be distributed as part of the contingent separate and additional May 1, 1995, foundation aid payments. It is the intent of the fifty-third legislative assembly that the fifty-fourth legislative assembly review the school consortium issue to evaluate possible funding alternatives for those school consortiums if more than fifty percent of the consortiums vote to reorganize.

SECTION 9. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $100,000 and up to $60,000 from other funds that may be available from the office of intergovernmental assistance, or so much of the sum as may be necessary, to the

department of public instruction for the purpose of undertaking a study during the beginning biennium beginning July 1, 1993, and ending June 30, 1995, of school transportation services and developing by December 1, 1994, a school transportation system data base that includes the network of usable roads, school district boundaries, and the location of all schools and related facilities. The department of public instruction is to negotiate with North Dakota state university in order to utilize any available information the university has regarding the study.

SECTION 10. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the $240,000 included in the grants - vocational and technical education line item in subdivision 1 of section 1 be used by the state board of vocational and technical education for the purchase and sharing of high technology equipment. It is the intent of the legislative assembly that the board of vocational education prior to spending any of the appropriation obtain a letter from the United States department of education stating that the $240,000 for the above purpose does not increase the state's funding level requirements for meeting federal maintenance of effort requirements.

SECTION 11. LEGISLATIVE COUNCIL STUDY OF EDUCATION FINANCE. The legislative council shall appoint a committee consisting of fourteen members. The house and senate majority leaders shall each recommend four members, and the house and senate minority leaders shall each recommend three members. The legislative council shall ensure that the committee contains a balanced representation. During the 1993-95 interim, the committee shall study the use of nonproperty factors in financing education, quality of education, legal action in this state regarding education finance issues, and the effect of any legislation passed by the fifty-third legislative assembly that relates to education financing, and may consider any other matters related to education. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to a special session of the fifty-third legislative assembly or to the fifty-fourth legislative assembly.

SECTION 12. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $75,000, or so much of the sum as may be necessary, to the legislative council for the purpose of conducting the study required by section 11 of this Act, and paying associated expenses, including necessary travel and the professional services of one or more consultants to assist with the study, during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 13. CONTINGENT SEPARATE AND ADDITIONAL PER STUDENT PAYMENTS. The superintendent of public instruction shall distribute a separate and additional per student payment from any unspent amount appropriated to the grants - foundation aid program for the biennium beginning July 1, 1993, and ending June 30, 1995, in the May 1, 1995, foundation aid payment to school districts. Any payment made under this section must be on a weighted basis, as determined under chapter 15-40.1.

SECTION 14. EXEMPTIONS. The educational technology grants authorized for the 1991-93 biennium in the grants - other grants line item of Senate Bill No. 2003, as approved by the fifty-second legislative assembly, are not subject to the provisions of section 54-44.1-11 and any unexpended funds from that appropriation are available for educational technology grants during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 15. AMENDMENT. Section 15-27.3-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-19. Changes in reorganization proposal. At any time after the reorganization proposal has become effective, any provision of the reorganization proposal ~~theretofore or thereafter adopted~~, including provisions affecting the adjustment of assets and liabilities but excepting provisions defining the boundaries of the district, may be changed by a majority vote of the qualified electors without approval of the state board or the county committee. The school board in the reorganized district may, upon its own motion, or shall, upon the filing with it of a petition signed by ~~a number of~~ qualified electors equal in number to twenty percent of the ~~number of~~ persons enumerated in the most recent school district census ~~for that district for the most recent year the census was taken~~, unless the census is greater than four thousand, in which case only fifteen percent of the number of persons enumerated in the school census is required, submit the question of authorizing a change in the school district's adopted reorganization proposal at the next regular or special election. However, not fewer than twenty-five signatures of qualified electors is required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In ~~those~~ districts with fewer than twenty-five qualified electors, the county superintendent for the county in which the school is located shall determine the number of qualified electors in the ~~qualified~~ district. If a majority of all votes cast by the electors residing in each of the geographic areas is in favor of the proposed change, then the proposed change is effected. ~~However, a~~ If a reorganization plan has been in effect for at least ten years, any proposed change to geographic voting areas is effective upon a majority vote in an election at large by the qualified electors of the district. A school board in a reorganized school district may change, by resolution, to at large voting for school board candidates if there is a variance of more than ten percent in the population between any of the district's established geographic areas with resident candidates.

SECTION 16. AMENDMENT. Section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **15-27.6-10. Approved proposal received by county superintendent - Special election called - Formation of new district.**

1. Upon receipt from the state board of an approved proposal for the reorganization of school districts, the county superintendent, after consulting with the interim district board, shall call a special election as provided in section 15-27.3-08.

2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 6 of section 15-27.3-08.

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[2] NOTE: Section 15-27.6-10 was also amended by section 2 of House Bill No. 1413, chapter 184; by section 3 of Senate Bill No. 2184, chapter 179; and by section 6 of Senate Bill No. 2528, chapter 182.

3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district ~~if the new district would qualify to receive the payments~~ provided ~~for in section 15-27.6-11 and if approved by~~ the state board approves and:

   a. There are three districts, at least one of which offers grades one through twelve, they have a minimum combined enrollment of six hundred students, and they cover a minimum combined area of seven hundred square miles [181299.168 hectares]; or

   b. There are four or more districts, at least one of which offers grades one through twelve, and they have a minimum combined enrollment of six hundred students or they cover a minimum combined area of seven hundred square miles [181299.168 hectares].

   Any contiguous districts ~~voting~~ that vote in favor of forming a new district, but that ~~would not qualify for payments under section 15-27.6-11~~ do not meet the requirements of either subdivision a or b of this subsection, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06, hold a hearing similar to the one described in section 15-27.6-07, and submit a new proposal to the state board for approval. No additional vote is required on the revised proposal, including a proposal that becomes effective on July 1, 1993. However, the newly proposed mill levy may not exceed the general fund mill levy limitations provided in section 57-15-14 plus the additional levy authorized by Senate Bill No. 2024, as approved by the fifty-third legislative assembly. For purposes of determining the amount that can be levied under Senate Bill No. 2024, the amount levied in dollars in the base year is the amount proposed to be levied in dollars by the new district in its first year of operation. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 of section 15-27.3-08.

4. a. If fewer than all of the districts vote in favor of a new district and the contiguous districts voting in favor do not meet the requirements of subdivision a or b of subsection 3, all or some of the districts may choose to vote again on the same or on a revised reorganization proposal, provided the districts meet the requirements of subdivision a or b of subsection 3.

   b. If the reorganization proposal is revised, the interim district board members representing the districts choosing to vote again shall hold another hearing and make findings as outlined in section 15-27.6-07. The interim district board members shall keep a record of the hearing and shall submit the record and the revised proposal, along with any other relevant information, to the state board for approval. If the

state board approves the revised reorganization proposal, the county superintendent shall proceed pursuant to subsection 1 of this section.

c. The second special election must be held within one year after the initial special election.

5. If a school district does not vote in favor of forming a new school district, any part of that school district excluded from the reorganization proposal pursuant to section 15-27.6-07 may either proceed with annexation or remain a part of that school district.

SECTION 17. AMENDMENT. Section 15-38-17 of the North Dakota Century Code as amended by section 11 of Senate Bill No. 2418, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

15-38-17. Education standards and practices board and administrator's professional practices board. The education standards and practices board consists of nine members. The governor shall appoint four classroom teachers from public schools, one classroom teacher from a private school, one school board member, two school administrators, and one dean of a college of education. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member. The administrator's professional practices board consists of five members from the education standards and practices board. The administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the one school board member who is a member of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board. The term of office of members of the education standards and practices board and the administrator's professional practices board shall be three years commencing on January first of the year of the appointment. Vacancies shall be filled for an unexpired term in the same manner as original appointments. No person may serve for more than two consecutive terms as a member of either board. ~~For each classroom teacher vacancy on the education standards and practices board, the governor shall appoint the member from a list of three names provided by the North Dakota education association. For each administrator vacancy on either board, the governor shall appoint the member from a list of three names provided by the North Dakota council of school administrators. For each school board vacancy on the board, the governor shall appoint the member from a list of three names provided by the North Dakota school board association. For each college dean vacancy on the board, the governor shall appoint a member from a list of three names provided by the deans of colleges of education.~~ Members of the current teachers' professional practices commission may serve out their remaining terms.

The education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice chairman, and the executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of either board. A majority shall constitute a quorum and a majority of the quorum shall have authority to act upon any matter properly before either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of each board shall receive twenty-five dollars for each day actually engaged in the service of the appropriate board and shall be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. No member of either board shall lose the member's regular salary or the above compensation while serving on official business of the appropriate board. The office of management and budget shall approve proper vouchers for expenses.

SECTION 18. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

High school per student payments - Cooperating districts. If any school district receiving payments under section 15-40.1-07 cooperates with another school district for the joint provision of education services under a plan approved by the superintendent of public instruction, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school student as the district received prior to initiation of the cooperative plan.

SECTION 19. AMENDMENT. Section 15-40.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **15-40.1-06. Declaration of legislative intent - Educational support per ~~pupil~~** student **- School district equalization factor - Limitations.**

1. It is the intent of the legislative assembly, not considering any separate and supplemental payments as may be provided by law, to support elementary and secondary education in this state from state funds based on the educational cost per ~~pupil~~ student. In determining the educational cost per ~~pupil~~ student, the following criteria may not be used:

   a. Expenditures for capital outlay for buildings and sites, or debt service.

   b. Expenditures from school activities and school lunch programs.

   c. Expenditures for the cost of transportation, including the cost of schoolbuses.

2. a. The educational support per ~~pupil~~ student during the first year of the ~~1991-93~~ 1993-95 biennium must be one thousand five hundred ~~fifty-two~~ seventy dollars and for the second year of the biennium the educational support per ~~pupil~~ student must be one thousand six hundred ~~eight~~ thirty-six dollars and is the basis for calculating grants-in-aid on a ~~per pupil~~ per student basis as provided in sections 15-40.1-07 and 15-40.1-08.

   b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of

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[3] NOTE: Section 15-40.1-06 was also amended by section 1 of Senate Bill No. 2036, chapter 193.

two hundred twenty dollars, which is the basis for calculating grants-in-aid on a ~~per-pupil~~ per student basis as provided in section 15-40.1-07.

c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become unaccredited in any succeeding school year must be supported for the 1991-92 school year or for the first year that they become unaccredited in the amount of the educational support per ~~pupil~~ student established in subdivision a, which is the basis for calculating grants-in-aid on a ~~per-pupil~~ per student basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of ~~pupils~~ students in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per ~~pupil~~ student in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the ~~per-pupil~~ per student payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the 1992-93 school year or for the first year that they become unaccredited in the amount of the educational support per ~~pupil~~ student established in subdivision a, which is the basis for calculating grants-in-aid on a ~~per-pupil~~ per student basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of ~~pupils~~ students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the ~~per-pupil~~ per student payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.

3. In determining the amount of ~~payment~~ payments due school districts for ~~per-pupil~~ per student and transportation aid under this section, the amount of per student aid and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted ~~from the amount of such aid~~:

a. The product of ~~twenty-one~~ twenty-three mills for the ~~1989-90~~ 1993-94 school year and ~~twenty-two~~ twenty-four mills for each year thereafter times the latest available net assessed and equalized valuation of property of the school district.

b. The amount that the unobligated general fund balance of a school ~~district's interim fund~~ district on the preceding June thirtieth is in excess of ~~the amount authorized by section 57-15-27~~ three-fourths

of the actual expenditures, plus an additional twenty thousand dollars.

4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:

   a. Annual average daily membership report.

   b. Annual school district financial report.

   c. The September tenth fall enrollment report.

   d. The personnel report forms for certified and noncertified employees.

5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

SECTION 20. AMENDMENT. Section 15-40.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[4] **15-40.1-07. High school ~~per-pupil~~** per student **payments - Amount - Proportionate payments.** Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school ~~pupils~~ students in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

1. For each high school district having under seventy-five ~~pupils~~ students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.635 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.625 adjusted by twenty-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school ~~pupils~~ students in grades nine through twelve registered in that school district, times the educational support per ~~pupil~~ student as provided in section 15-40.1-06. Beginning July 1, 1994, the factor is 1.625 adjusted by fifty percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

2. For each high school district having seventy-five or more, but less than one hundred fifty ~~pupils~~ students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.35 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.335 adjusted by twenty-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of

[4] NOTE: Section 15-40.1-07 was also amended by section 1 of House Bill No. 1158, chapter 194.

public instruction, times the number of high school ~~pupils~~ students in grades nine through twelve registered in that school district, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06. Beginning July 1, 1994, the factor is 1.335 adjusted by fifty percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

3. For each high school district having one hundred fifty or more, but less than five hundred fifty ~~pupils~~ students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.28 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.24 adjusted by twenty-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school ~~pupils~~ students in grades nine through twelve registered in that school district, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06. Beginning July 1, 1994, the factor is 1.24 adjusted by fifty percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

4. For each high school district having a total high school enrollment of five hundred fifty or more ~~pupils~~ students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.17 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.14 adjusted by twenty-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of high school ~~pupils~~ students in grades nine through twelve registered in that school district, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06. Beginning July 1, 1994, the factor is 1.14 adjusted by fifty percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:

   a. Subsection 1 times the number of ~~pupils~~ students registered in the alternative education program, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, if the alternative education program has less than seventy-five ~~pupils~~ students in average daily membership.

   b. Subsection 2 times the number of ~~pupils~~ students registered in the alternative education program, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty ~~pupils~~ students in average daily membership.

c. Subsection 3 times the number of ~~pupils~~ students registered in the alternative education program, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, if the alternative education program has one hundred fifty or more, but less than five hundred fifty ~~pupils~~ students in average daily membership.

d. Subsection 4 times the number of ~~pupils~~ students registered in the alternative education program times the educational support per ~~pupil~~ student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more ~~pupils~~ students in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of ~~pupils~~ students in the next lower category. ~~Such payments~~ Payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which ~~such~~ the student is enrolled for specific courses. School districts offering high school summer school programs are eligible for proportionate payments provided each course offered ~~in such programs~~ satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for ~~such~~ summer education programs.

~~Districts that did not maintain high schools during the year of 1964-1965 are not eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered.~~ Payments pursuant to this chapter to school districts in bordering states must be made after subtracting the amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident ~~pupils~~ students enrolled in the school district plus the number of resident ~~pupils~~ students from the district attending school in another state.

SECTION 21. AMENDMENT. Section 15-40.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[5] **15-40.1-08. Elementary ~~per-pupil~~ per student payments - Amount.** Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary ~~pupils~~ students in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural school, the amount of money resulting from multiplying the factor ~~1.29 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.28 adjusted by twenty-five percent of the difference between 1.28 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of ~~pupils~~ students in that school in grades one through eight in average daily membership, up to a maximum of sixteen ~~pupils~~ students, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06. There must be paid .9 times each additional ~~pupil~~ student in its school in grades one through eight in average daily membership times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, except that no payment may be made for more than twenty ~~pupils~~ students in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the ~~pupils~~ students in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has ~~pupils~~ students in grade seven or eight, the weighting factor for the ~~pupils~~ students in ~~grades~~ grade seven ~~and~~ or eight must be the same as that provided for in subsection 5. Beginning July 1, 1994, the factor is 1.28 adjusted by fifty percent of the difference between 1.28 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

2. For each elementary school in school districts having under one hundred ~~pupils~~ students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor ~~1.045 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.09 adjusted by twenty-five percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of ~~pupils~~ students in that school in grades one through six in average daily membership in each classroom or for each teacher, up to a maximum of twenty ~~pupils~~ students per classroom or per teacher, times the educational support per ~~pupil as~~ student provided in section 15-40.1-06. There must be paid .9 times each additional ~~pupil~~ student in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, except that no payment may be made for more than twenty-five ~~pupils~~ students in average daily membership in each

[5] NOTE: Section 15-40.1-08 was also amended by section 2 of House Bill No. 1158, chapter 194, and by section 1 of Senate Bill No. 2178, chapter 195.

classroom or for each teacher. Beginning July 1, 1994, the factor is 1.09 adjusted by fifty percent of the difference between 1.09 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

3. For each elementary school in school districts having one hundred or more ~~pupils~~ students in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary ~~pupils~~ students in grades one through six, the amount of money resulting from multiplying the factor ~~.9025 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ .905 adjusted by twenty-five percent of the difference between .905 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of ~~pupils~~ students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, except that no payment may be made for more than thirty ~~pupils~~ students in average daily membership in each classroom or for each teacher. Beginning July 1, 1994, the factor is .905 adjusted by fifty percent of the difference between .905 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

4. For each elementary school in school districts having an average daily membership of one thousand or more elementary ~~pupils~~ students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by twenty-five percent of the difference between .95 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of ~~pupils~~ students in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, except that no payment may be made for more than thirty ~~pupils~~ students in average daily membership in each classroom or for each teacher. Beginning July 1, 1994, the factor is .95 adjusted by fifty percent of the difference between .95 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction. Beginning July 1, 1995, the factor is .95 adjusted by seventy-five percent of the difference between .95 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction. Beginning July 1, 1996, the superintendent of public instruction shall establish the factor that reflects the five-year average cost of education per student for this category.

5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school ~~that has pupils~~ having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor ~~1.005 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.01 adjusted by twenty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public

instruction, times the number of ~~pupils~~ students in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per ~~pupil as~~ student provided in section 15-40.1-06, except that no payment may be made for more than thirty ~~pupils~~ students in average daily membership in each classroom or for each teacher. Beginning July 1, 1994, the factor is 1.01 adjusted by fifty percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

6. For each elementary school having ~~pupils~~ students under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor ~~.75 for the 1989-90 school year and, beginning July 1, 1990, the factor~~ 1.01 adjusted by twenty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of special education ~~pupils~~ students in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per ~~pupil as~~ student provided in section 15-40.1-06. Beginning July 1, 1994, the factor is 1.01 adjusted by fifty percent of the difference between 1.01 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, and for each out-of-state kindergarten program, approved by the state superintendent and utilized by North Dakota school districts bordering other states, the amount of money resulting from multiplying the factor .50 adjusted by twenty-five percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, times the number of ~~pupils~~ students in that school in average daily membership in each classroom or for each teacher times the educational support ~~per pupil payment~~ per student for that elementary school, as determined under this section, except that no payment may be made for more than twenty-five ~~pupils~~ students in average daily membership in each classroom or for each teacher. The full ~~per pupil~~ per student payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller ~~per pupil~~ per student payment. Beginning July 1, 1994, the factor is .50 adjusted by fifty percent of the difference between .50 and the five-year average cost of education per student for this category, as determined by the superintendent of public instruction.

Every school district must receive at least as much in total payments for elementary ~~pupils~~ students as it would have received if it had the highest number of ~~pupils~~ students in the next lower category. Payments pursuant to this chapter to school districts in bordering states must be made after subtracting the amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by

the total number of resident ~~pupils~~ students enrolled in the school district plus the number of resident ~~pupils~~ students from the district attending school in another state.

SECTION 22. AMENDMENT. Section 15-40.1-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-09. Application for payments - Verification and determination of payments for high school students - Report of county superintendent of schools - Appeal. Immediately upon the completion of the registration of students at the beginning of each school term and in no event later than September tenth of each year, the business manager of each school district within or without this state which is claiming payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a claim on a form prescribed by the superintendent of public instruction stating the number of students registered in high school and elementary grades for which payments are claimed, and such other information as may be reasonably requested by the superintendent of public instruction. Not later than December first, the superintendent of public instruction shall certify to the office of management and budget a list of the school districts and schools not operated by school districts entitled to payments from state funds, together with the amounts to which the several districts and schools are entitled. ~~Per pupil~~ Per student aid as provided under sections 15-40.1-06, 15-40.1-07, and 15-40.1-08 must be computed on the basis of the previous year's average daily membership less the number of students attending school during the current school year in another district under the provisions of open enrollment or the current year's fall enrollment, whichever is greater, for all current grade levels. Adjustments must be made in the subsequent year according to a comparison between the average daily membership for the year for which the adjusted payment is being made and the year preceding the year for which the adjusted payment is being made, whichever is greater, for grade levels that existed in both years. The greater of the two preceding years' average daily membership must be used in computing any adjustment in a district's foundation aid payments. For purposes of this chapter, "average daily membership" shall mean the total days all students in a given school are in attendance, including days set aside for the North Dakota education association convention, plus any three holidays selected from those listed in subsections 2 through 10 of section 15-38-04.1 which have been decided upon after consultation with the teachers, the total days all students are absent, and the two parent-teacher conference days authorized in section 15-47-33, divided by one hundred eighty days. School districts educating children of agricultural migratory workers or offering high school summer school programs during the months of June, July, and August shall not be restricted to payments for a one hundred eighty-day school term.

Immediately upon the termination of the school term and in no event later than July fifteenth of each year, the business manager of each school district within or without this state which has received payments from state funds under the provisions of this chapter shall file with the county superintendent of schools a verified statement of the name, residence, and membership of elementary and high school students as provided for in this section, and number of units of high school work taken by each high school student enrolled during the previous school year. ~~Such~~ The statement shall be attested to by the county superintendent of schools. The county superintendent shall investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement ~~filed with him. He~~. The county superintendent shall certify to the

superintendent of public instruction on or before September first of each year the number of enrolled students in each district in ~~his~~ the county for the previous school year upon which any adjustment may be based as provided in this section. If any statement is disallowed in whole or in part, notice ~~thereof~~ of the disallowance and the names of students who are disallowed shall be reported to the superintendent of public instruction and to the district filing the statement. Any district may appeal to the superintendent of public instruction from the determination of the county superintendent of schools on or before September fifteenth in the year in which the determination is made. The superintendent of public instruction may change or modify the determination of the county superintendent if the evidence submitted by the district warrants a modification. The judgment of the superintendent of public instruction shall be final.

SECTION 23. AMENDMENT. Section 15-40.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[6] **15-40.1-16. Aid for transportation.** There shall be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school within the incorporated limits of a city, the following amounts:

1. For schoolbuses and school vehicles transporting ~~pupils~~ students who live outside the incorporated limits of the city in which school the ~~pupil~~ student is enrolled is located, a sum equal to twenty-five cents per mile [1.61 kilometers] ~~during each year of the 1991-93 biennium~~ for vehicles having a capacity of nine or fewer ~~pupils~~ students and sixty-seven cents per mile [1.61 kilometers] for ~~each year of the 1991-93 biennium for~~ schoolbuses having a capacity of ten or more ~~pupils. In addition, those school~~ students. School districts qualifying for payments for buses having a capacity of ten or more ~~pupils~~ students are entitled to an amount equal to twenty-eight cents per day for each public school ~~pupil~~ student living outside the city limits who is transported in such buses.

2. For ~~pupils~~ students who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city ~~in~~ within which the school that the ~~pupil is enrolled~~ students attend is located, a sum equal to seventeen and one-half cents per ~~pupil~~ student per one-way trip. However, no payment ~~shall~~ may be made under this subsection for a student who rode on a vehicle for which payments are claimed under subsection 1.

The mileage payments provided for in this section shall be made to each school district for transporting ~~pupils~~ students to and from school. ~~Such payments~~ Payments shall be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to ~~the~~ compliance with the laws of this state in regard to schoolbuses and their drivers shall be made in such

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[6] NOTE: Section 15-40.1-16 was also amended by section 4 of House Bill No. 1184, chapter 180.

manner and ~~in such~~ detail as the superintendent of public instruction may require at the time an application is made for payments provided under this section.

SECTION 24. AMENDMENT. Section 15-40.1-18 of the North Dakota Century Code is amended and reenacted as follows:

15-40.1-18. State transportation payments to school districts. The superintendent of public instruction shall determine the total amount of payments to be made to the school districts for transportation aid. The office of management and budget shall pay the sum certified by the superintendent of public instruction to each school district. ~~Such payments~~ Payments shall be made in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15-40.1-05. During the 1993-94 school year, no school district may receive more than one hundred percent of the actual costs it incurs in the provision of transportation services. During the 1994-95 school year, no school district may receive more than ninety percent of the actual costs it incurs in the provision of transportation services. The superintendent of public instruction shall calculate the difference between the actual costs incurred by all districts in the provision of transportation services during the 1994-95 school year and ninety percent of the actual costs incurred by all school districts in the provision of transportation services during the previous school year. The superintendent shall use the difference to increase the per student payments provided for in subsections 1 and 2 of section 15-40.1-16 by the same amount under each subsection. For purposes of this section, actual costs include the transportation operating expenditures reported to the superintendent of public instruction for the most recent year plus the eight-year average cost of transportation equipment determined by the superintendent of public instruction.

SECTION 25. AMENDMENT. Section 15-40.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[7] **15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive.** ~~Any~~

1. a. Except as provided in this subsection, any school district that admits nonresident ~~pupils~~ students to its schools, as provided by this chapter, shall charge tuition for ~~such pupils except that school~~ those students. School districts have the option of charging tuition for nonresident ~~pupils~~ students enrolled in an approved alternative education program. The whole amount of the tuition must be paid by the district from which the ~~pupil~~ student is admitted, in accordance with section 15-40.2-03, or by the ~~pupil's~~ student's parent or guardian, in accordance with section 15-40.2-06.

   b. Except as otherwise provided, any school district that fails to ~~sign a tuition agreement and fails to~~ charge and collect tuition for nonresident students as provided for in section 15-40.2-03 and this section shall forfeit foundation payments for those nonresident students for whom tuition is not paid. A school district may accept a nonresident student from another school district in this state which

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[7] NOTE: Section 15-40.2-04 was also amended by section 3 of Senate Bill No. 2187, chapter 196.

offers the same grade level as that in which the student is enrolled, without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.

c. No school district may charge or collect from any nonresident ~~pupil~~ student, parent or guardian of a nonresident ~~pupil~~ student, or the district of the ~~pupil's~~ student's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident ~~pupils~~ students.

2. For purposes of subsection 1 and all statutory provisions relating to open enrollment, the member districts of a consortium must be treated as a single school district.

SECTION 26. AMENDMENT. Section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, ~~1993~~ 1997, and after that date is ineffective.

Approved May 5, 1993
Filed May 6, 1993

CHAPTER 4

HOUSE BILL NO. 1004
(Appropriations Committee)

PROTECTION AND ADVOCACY PROJECT

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds, to the protection and advocacy project for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$1,968,696
Information services	38,770
Operating expenses	474,265
Equipment	15,493
Total all funds	$2,497,224
Less estimated income	1,170,447
Total general fund appropriation	$1,326,777

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 5

HOUSE BILL NO. 1005
(Appropriations Committee)

OFFICE OF MANAGEMENT AND BUDGET

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide for the merger of a nonprofit corporation doing business as a hospital with a corporation organized for profit; to amend and reenact sections 4-01-19, 23-29-07, subsections 5, 9, and 10 of section 41-09-42, section 41-09-42.1, and subsections 2 and 5 of section 54-06-04 of the North Dakota Century Code and section 4 of House Bill No. 1027, as approved by the fifty-third legislative assembly, relating to the pride of Dakota program, solid waste management facility permits, the computerized Uniform Commercial Code central filing system fund, preparation of agency biennial reports, and accessibility standards for buildings and facilities subject to the federal Americans with Disabilities Act of 1990; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to the homeless grant program; to provide a statement of legislative intent relating to total quality management in state government; to authorize appropriation grant line item transfers at the approval of the budget section; to authorize the transfer of various special funds to the general fund; to repeal section 3 of chapter 32 of the 1991 Session Laws of North Dakota, relating to the transfer of funds from the game and fish fund to the state radio communications operating account; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget for the purpose of defraying their expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.
OFFICE OF MANAGEMENT AND BUDGET CENTRAL OPERATIONS

Salaries and wages	$ 4,773,576
Information services	1,794,378
Operating expenses	1,634,539
Equipment	64,220
Grants	32,667,427
Grants to state agencies	1,905,000
Grants for homeless programs	40,000
Boys and girls clubworks	53,000
State contingencies	2,500,000

State memberships	199,000
Firemen's association	55,000
Unemployment insurance	2,000,000
Capitol grounds planning commission	25,000
ADA contingency	100,000
Capital planning	100,000
Total all funds	$47,911,140
Less estimated income	40,414,648
Total general fund appropriation	$ 7,496,492

Subdivision 2.

FACILITY MANAGEMENT

Salaries and wages	$ 3,110,931
Information services	28,800
Operating expenses	2,611,000
Equipment	72,000
Capital improvements	1,626,000
Total all funds	$ 7,448,731
Less estimated income	500,000
Total general fund appropriation	$ 6,948,731

Subdivision 3.

INFORMATION SERVICES DIVISION

Salaries and wages	$10,262,330
Operating expenses	18,963,344
Equipment	5,180,000
Total special funds appropriation	$34,405,674

Subdivision 4.

CENTRAL DUPLICATING SERVICES

Salaries and wages	$ 1,305,546
Information services	56,133
Operating expenses	2,356,982
Equipment	40,000
Total special funds appropriation	$ 3,758,661

Subdivision 5.

STATE RADIO COMMUNICATIONS

Salaries and wages	$ 1,940,868
Information services	1,208,260
Operating expenses	411,208
Equipment	123,000
Total all funds	$ 3,683,336
Less estimated income	330,000
Total general fund appropriation	$ 3,353,336

Grand total general fund appropriation H.B. 1005	$17,798,559
Grand total special funds appropriation H.B. 1005	$79,408,983
Grand total all funds H.B. 1005	$97,207,542

SECTION 2. TRANSFER. Upon approval of the budget section, the director of the office of management and budget may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. ADDITIONAL INCOME. All income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1993, and ending, June 30, 1995, must be deposited in the appropriate operating funds in the state treasury and can be expended with the authorization of the emergency commission.

SECTION 4. EXEMPTION. The information services appropriation contained in section 1 of chapter 31 of the 1991 session laws is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation shall be available for continued development and operation of the accounting, management, and payroll systems during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 5. EXEMPTION. The state radio communications equipment appropriation contained in section 1 of chapter 32 of the 1991 Session Laws is not subject to the provisions of North Dakota Century Code section 54-44.1-11, and the unexpended funds from this appropriation shall be available for the purchase of radio consoles during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. FACILITY MANAGEMENT. The amount of $500,000, or so much of the sum as is necessary, included in the estimated income line item in section 1 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 7. INTENT - HOMELESS GRANT PROGRAM. It is the intent of the fifty-third legislative assembly that the grants for homeless program line item contained in section 1 of this Act is to be administered by the office of intergovernmental assistance and that none of the funding provided is to be used for administering the distribution of the grants. The funding provided in section 1 of this Act is to be used to supplement the emergency shelter grants program and the funds are to be distributed in accordance with the rules and regulations provided for the emergency shelter grants program.

SECTION 8. INTENT - TOTAL QUALITY MANAGEMENT. It is the intent of the fifty-third legislative assembly that state agencies and institutions participate in a coordinated effort of public and private organizations to develop and implement the highest possible operational standards utilizing continuous quality improvement processes. State agencies and institutions are hereby authorized to enter into contracts to provide office space, staff and educational needs to further this endeavor.

SECTION 9. TRANSFER. Upon approval of the budget section, all state agencies and institutions may transfer appropriation authority between the grants line item and the grants to state agencies line item during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 10. INTENT - INDIRECT COST ALLOCATION. It is the intent of the fifty-third legislative assembly that the office of management and budget is to collect from state agencies, amounts for indirect cost reimbursement for which appropriations were provided. Notwithstanding North Dakota Century Code section 54-44.1-15, the department of public instruction and the state department of health and consolidated laboratories may deposit indirect cost recoveries in their operating accounts.

SECTION 11. TRANSFER. During the biennium beginning July 1, 1993, and ending June 30, 1995, the director of the office of management and budget is authorized to transfer special funds to the general fund as follows:

Fire and tornado fund	$ 12,000,000
State bonding fund	2,500,000
Lands and minerals trust fund	2,500,000
Human services receivables	3,000,000
State aid distribution fund	18,894,000
Pay equity implementation fund	229,000

The state treasurer shall transfer to the general fund, upon request of the director of the office of management and budget, prior to June 30, 1995, any funds remaining in the state aid distribution fund, after it has been determined that sufficient funds have been deposited in the state aid distribution fund to make payments pursuant to all appropriations and other transfers from the state aid distribution fund for the biennium ending June 30, 1995.

The authorized transfers from the state bonding fund are up to $2,000,000 after December 22, 1994, and up to $500,000 after June 1, 1995. The authorized transfers from the fire and tornado fund are up to $4,000,000 after December 29, 1993, up to $4,000,000 after June 29, 1994, and up to $4,000,000 after December 30, 1994.

SECTION 12. Merger of nonprofit corporation doing business as a hospital with a corporation organized for profit - Retention of property tax status. Notwithstanding any provision of chapters 10-19.1 and 10-25, a nonprofit corporation doing business as a hospital may merge with a corporation organized for profit and form a nonprofit corporation. Notwithstanding any provision of chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger. Notwithstanding any provision of chapters 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

SECTION 13. TRANSFER. On July 1, 1993, the state treasurer shall transfer the unobligated balance of any moneys received or generated by the commissioner of agriculture as a result of the pride of Dakota program within the department of agriculture to the general fund in the state treasury. Upon payment of all obligations, the state treasurer shall transfer any balance to the general fund in the state treasury.

SECTION 14. AMENDMENT. Section 4-01-19 of the North Dakota Century Code is amended and reenacted as follows:

4-01-19. Marketing bureau. Within the department of agriculture of this state a marketing bureau must be established and maintained for the purpose of gathering and disseminating statistical information on agricultural marketing problems of the state, and to engage in marketing services of agricultural products. Any moneys received or generated by the pride of Dakota program must be deposited in the general fund in the state treasury.

SECTION 15. AMENDMENT. Section 23-29-07 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07. Permits.**

1. The department ~~is hereby authorized to~~ may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. All ~~such~~ permits are nontransferable and are for a term of not more than five years from the date of issuance. All ~~such~~ permits ~~so~~ issued are conditioned upon the observance of the laws of the state and the rules ~~and regulations~~ authorized ~~herein~~ under this chapter.

2. For any permit application completed after July 1, 1994, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.

3. Notwithstanding subsection 2, if the new solid waste management facility for which the permit application was completed after July 1, 1994, will be owned or operated by a solid waste management district board established under section 23-29-06, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the district. If a majority of the qualified electors voting in the election vote to disapprove of the facility, the department may not issue the permit.

4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

SECTION 16. TRANSFER. On July 1, 1993, the state treasurer shall transfer the unobligated balance of any moneys in the computerized Uniform Commercial Code central filing system fund to the general fund in the state treasury. Upon payment of all obligations, the state treasurer shall transfer any balance to the general fund in the state treasury.

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[1] NOTE: Section 23-29-07 was also amended by section 6 of House Bill No. 1057, chapter 111, and by section 1 of House Bill No. 1445, chapter 267.

[2] **SECTION 17. AMENDMENT.** Subsections 5, 9, and 10 of section 41-09-42 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement or to obtain information from the system is as follows:

   a. For filing and indexing any statement under the Uniform Commercial Code, five dollars, and when a nonstandard statement is presented for filing, an additional fee of five dollars plus one dollar per page must be made. No additional fee may be charged if the form is filed also to gain protection under the central notice system.

   b. For making certified copies of any recorded instrument, ~~five~~ seven dollars.

   c. For completing a certificate requesting information, ~~five~~ seven dollars for the first five entries and ~~one dollar~~ two dollars for each additional five entries or fraction thereof.

   d. For completing a certificate requesting copies, ~~five~~ seven dollars for the first three copies or fraction thereof, and ~~one dollar~~ two dollars for each additional copy.

   e. For furnishing copies only of any filed instrument, one dollar.

9. The fee for furnishing information on a verbal request pursuant to subsection 5 of section 41-09-46 is ~~five~~ seven dollars.

10. The fee for furnishing a certificate pursuant to subsection 5 of section 41-09-46 is ~~five~~ seven dollars.

SECTION 18. AMENDMENT. Section 41-09-42.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-42.1. ~~Creation of special fund.~~ Fees collected by secretary of state. ~~A special fund is hereby established in the state treasury to be known as the computerized Uniform Commercial Code central filing system fund.~~ Any fees collected by the secretary of state pursuant to ~~subsections 5, 8, 9, 10, and 11 of~~ section 41-09-42 must be deposited in the ~~computerized Uniform Commercial Code central filing system fund and may be spent within the limits of legislative appropriations for the purpose of implementing, maintaining, updating, and administering the computerized Uniform Commercial Code central filing data base system, the computerized central notice system, and the computerized statutory lien data base system. This fund is not subject to section 54-44.1-11~~ general fund in the state treasury.

SECTION 19. AMENDMENT. Subsections 2 and 5 of section 54-06-04 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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[2] NOTE: Subsections 5, 9, and 10 of section 41-09-42 were also amended b y section 2 of House Bill No. 1212, chapter 411.

2. A committee composed of ~~the governor,~~ the superintendent of the state historical board, the state librarian, and the director of the office of management and budget, or such other persons as may be designated by such persons to represent them, shall meet at the call of the director of the office of management and budget to set ~~minimum~~ the requirements ~~and establish guidelines~~ which must be prescribed by the office of management and budget for form, style, materials, and content ~~to assist state departments, institutions, and agencies of the executive branch of government in preparation~~ of biennial reports required by law.

5. All officers, departments, boards, commissions, and state institutions required to submit reports covering their operations for the two preceding fiscal years to the governor and the office of management and budget shall submit ~~typewritten or mimeographed~~ copies of their reports in the form and style, using the materials, and having the content prescribed under the provisions of subsection 2 on or before the first day of December in each year after the regular session of the legislative assembly. One copy of each report must be submitted to the governor and two copies to the office of management and budget. The office of management and budget shall cause to be prepared twenty-five copies of each report submitted under the provisions of this subsection ~~and shall bind these reports into volumes or sets to be known as "governmental biennial reports"~~ which must be distributed to the following agencies:

   a. Governor's office.

   b. Attorney general's office.

   c. Legislative council.

   d. State law library.

   e. The state institutions of higher education.

   f. State library.

   g. Two ~~volumes~~ copies of each report must be placed in the office of the secretary of state for official and public use.

   ~~The style of binding to be used for the biennial reports must be determined by the office of management and budget.~~ The reports included in this subsection may not be further printed or reproduced except as provided for in this subsection and section 54-06-05.

SECTION 20. AMENDMENT. Section 4 of House Bill No. 1027, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

SECTION 4. Accessibility standards. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirement that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section

4.1.6(1)(k)(i) in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under Public Law 101-336. For public accommodations, an alternative to a structural change in existing buildings or facilities is permitted only after it has been documented, in accordance with regulations adopted under Public Law 101-336, that a particular structural change is not readily achievable. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the office of intergovernmental assistance for recording.

SECTION 21. REPEAL. Section 3 of chapter 32 of the 1991 Session Laws of North Dakota is repealed.

SECTION 22. UNCONSTITUTIONALITY - SEVERABILITY. If a court determines subsection 3 of North Dakota Century Code section 23-29-07 to be invalid, North Dakota Century Code section 1-02-20 applies and the remainder of section 23-29-07 remains valid.

SECTION 23. EFFECTIVE DATE. Section 20 of this Act becomes effective August 1, 1993.

SECTION 24. EMERGENCY. Section 12 of this Act and the portion of section 21 of this Act repealing section 3 of chapter 32 of the 1991 Session Laws of North Dakota are declared to be emergency measures.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 6

HOUSE BILL NO. 1006
(Appropriations Committee)

DIVISION OF EMERGENCY MANAGEMENT

AN ACT to provide an appropriation for defraying the expenses of the division of emergency management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$1,417,191
Information services	26,337
Operating expenses	541,153
Equipment	36,905
Grants	1,990,000
Grants to state agencies	360,000
Total all funds	$4,371,586
Less estimated income	4,069,022
Total general fund appropriation	$ 302,564

SECTION 2. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND. The estimated income line item in section 1 of this Act includes $326,652 from the state hazardous material preparedness and response fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 7

HOUSE BILL NO. 1007
(Appropriations Committee)

ADJUTANT GENERAL

AN ACT to provide an appropriation for defraying the expenses of the adjutant general; and to provide an appropriation for the North Dakota veterans' cemetery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the adjutant general's office for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

ADJUTANT GENERAL

Salaries and wages	$ 2,104,453
Information services	20,389
Operating expenses	2,114,275
Equipment	50,800
Capital improvements	299,000
Grants	396,164
Recruiting and retention	27,000
Army guard contract	6,884,523
Tuition fees	900,000
Air guard contract	5,293,384
Total all funds	$18,089,988
Less estimated income	11,590,028
Total general fund appropriation	$ 6,499,960

SECTION 2. SPECIAL FUNDS. The amount of $570,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act is to be spent from the national guard tuition trust fund for the tuition programs provided for in chapters 37-07.1 and 37-07.2 for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. APPROPRIATION - REPORT TO BUDGET SECTION. There is hereby appropriated any funds received by the adjutant general from federal and private sources for the purpose of constructing and operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 1993, and ending June 30, 1995. The adjutant general shall report to the budget section of the legislative council during the 1993-95 biennium on the funds received and spent for the veterans' cemetery.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 8

HOUSE BILL NO. 1008
(Appropriations Committee)

BOARD OF ANIMAL HEALTH

AN ACT making an appropriation for defraying the expenses of the state board of animal health; and to amend and reenact section 36-01-08 of the North Dakota Century Code, relating to fees charged by the state board of animal health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state board of animal health for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$358,771
Information services	7,440
Operating expenses	128,054
Equipment	2,234
Total general fund appropriation	$496,499

SECTION 2. AMENDMENT. Section 36-01-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **36-01-08. Duties of board - Rules - Fees.** The state board of animal health shall protect the health of the domestic animals and captive wildlife of this state and shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and captive wildlife of this state. The board may make rules for the conduct of its business and to carry into effect the purposes of this chapter and other duties prescribed in this title. The rules of the state board of animal health must be adopted in accordance with chapter 28-32. The board shall collect six cents for each brucellosis tag and each identification tag, and eight dollars for each health book it distributes. The fees collected by the board must be deposited in the state general fund.

Approved April 30, 1993
Filed May 3, 1993

[1] NOTE: Section 36-01-08 was also amended by section 2 of House Bill No. 1297, chapter 355.

CHAPTER 9

HOUSE BILL NO. 1009
(Appropriations Committee)

HOMESTEAD CREDIT APPROPRIATION

AN ACT making an appropriation to the state tax commissioner for payment of state reimbursement under the homestead tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other income to the state tax commissioner for the purpose of reimbursing the homestead tax credit, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Grants	$5,375,000
Total all funds	$5,375,000
Less estimated income	1,500,000
Total general fund appropriation	$3,875,000

SECTION 2. ESTIMATED INCOME - TRANSFER. The sum of $1,500,000 of the other funds appropriated in section 1 of this Act is to be spent from moneys from the housing finance agency reserves to the state tax commissioner for the purpose of defraying expenses of the homestead tax credit program for the biennium beginning July 1, 1993, and ending June 30, 1995. The moneys shall be transferred upon order of the industrial commission to the state tax commissioner's office when it determines the transfer is necessary for the state tax commissioner to make the homestead tax credit payments.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 10

HOUSE BILL NO. 1010
(Appropriations Committee)

STATE AID DISTRIBUTION

AN ACT making an appropriation for state revenue sharing and personal property tax replacement payments to political subdivisions; to provide a statement of legislative intent; and to provide for allotments, reductions, and a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, to the state treasurer for the purpose of distributing state aid distribution fund revenue to local political subdivisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Grants, benefits, and claims	$51,500,000
Total state aid distribution fund appropriation	$51,500,000

SECTION 2. INTENT. It is the intent of the legislative assembly that if the total of amounts appropriated and the amounts transferred from the state aid distribution fund, before budget allotments, is less than the amount deposited in the state aid distribution fund during the 1993-95 biennium, the legislative assembly shall provide a deficiency appropriation to local political subdivisions of the excess amount deposited and that the deficiency appropriation be for the 1993-95 biennium. This section recognizes that transfers may be made by the state treasurer, upon the request of the director of the office of management and budget, from the state aid distribution fund to the general fund, as authorized by 1993 House Bill No. 1005.

SECTION 3. BUDGET REDUCTIONS - TRANSFER. The appropriation provided in section 1 of this Act is to be reduced by the director of the budget by the same percentage as any general fund reductions or allotments made pursuant to North Dakota Century Code sections 54-44.1-12 and 54-44.1-13.1 which may occur during the biennium beginning July 1, 1993, and ending June 30, 1995, and an amount equal to the reduction must be transferred by the state treasurer from the state aid distribution fund to the general fund.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 11

HOUSE BILL NO. 1011
(Appropriations Committee)

SEED DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from income, to the state seed department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$2,683,352
Information services	19,800
Operating expenses	845,617
Equipment	119,045
Grants	100,000
Contingency	100,000
Total appropriation from seed department fund	$3,867,814

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 12

HOUSE BILL NO. 1012
(Appropriations Committee)

GAME AND FISH DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state game and fish department; and to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to fees for game and fish licenses and permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state game and fish department for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 9,344,087
Information services	349,324
Operating expenses	5,452,225
Equipment	405,074
Capital improvements	883,160
Grants	927,000
Grants to state agencies	423,500
Noxious weed control	145,000
Land habitat and deer depredation	1,011,000
Wildlife habitat	650,000
Miscellaneous	200,000
Grants, gifts, and donations	100,000
Nongame wildlife	120,000
Lonetree reservoir	770,000
Total special funds appropriation	$20,780,370

SECTION 2. HABITAT RESTORATION. The amount of $650,000, or such lesser amount as may be available, for the line item entitled wildlife habitat in section 1 of this Act is from the habitat restoration stamp program fund, to lease privately owned lands for wildlife habitat to reestablish wildlife population for the biennium beginning July 1, 1993, and ending June 30, 1995. These funds may be spent only for the purposes and utilizing guidelines as outlined in section 20.1-03-12.1.

SECTION 3. LAND HABITAT AND DEER DEPREDATION. The amount of $1,011,000, or such lesser amount as may be available, for the line item entitled land habitat and deer depredation in section 1 of this Act, is from the private land habitat improvement fund to improve wildlife habitat on private land and alleviate depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. NONGAME WILDLIFE. The amount of $35,000, or such lesser amount as may be available, for the line item entitled nongame wildlife in section 1 of this Act, is from the nongame wildlife fund, for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 5. CONTINGENT APPROPRIATION. There is hereby appropriated upon budget section approval, any moneys in the state game and fish operating fund, not otherwise appropriated, to the state game and fish department, up to $1,000,000 of the amount that the state game and fish operating fund balance exceeds $6,000,000 on July 1, 1993, plus the amount that the game and fish operating fund balance exceeds $5,500,000 on July 1, 1994, plus any amount that the state game and fish operating fund 1993-95 revenues are projected to exceed estimated 1993-95 revenues by $150,000, for the operations of the state game and fish department for the biennium beginning July 1, 1993, and ending June 30, 1995.

[1] **SECTION 6.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

<u>For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.</u>

Approved April 28, 1993
Filed April 30, 1993

[1] NOTE: Section 20.1-03-12 was also amended by sections 2 and 3 of House Bill No. 1180, chapter 229; by section 1 of House Bill No. 1355, chapter 234; and by section 3 of House Bill No. 1514, chapter 227.

CHAPTER 13

HOUSE BILL NO. 1013
(Appropriations Committee)

HISTORICAL SOCIETY

AN ACT to provide an appropriation for defraying the expenses of the state historical society.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state historical society for the purpose of defraying the expenses of its divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$3,381,472
Information services	55,845
Operating expenses	573,035
Equipment	60,759
Capital improvements	221,154
Grants	452,900
Grants to state agencies	22,100
International peace garden	364,583
Total all funds	$5,131,848
Less estimated income	1,097,841
Total general fund appropriation	$4,034,007

SECTION 2. PARKS AND HISTORIC SITES IMPROVEMENTS. The state historical society may spend funds appropriated in the parks and historic sites improvements line item in section 1 of House Bill No. 1014, approved by the fifty-third legislative assembly, subject to the approval of the director of the parks and recreation department and the director of the office of management and budget, for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. FUNDING - INTERNATIONAL PEACE GARDEN. The superintendent of the state historical society shall transfer fifty percent of the amount appropriated in the international peace garden line item in section 1 of this Act to the international peace garden within ten days of July 1, 1993, and transfer the remaining fifty percent within ten days of July 1, 1994. The state historical society may not reduce the funds appropriated for the international peace garden in section 1 of this Act by a percentage greater than any percentage allotment of general fund moneys required of the department pursuant to the provisions of sections 54-44.1-12 and 54-44.1-13.1.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 14

HOUSE BILL NO. 1014
(Appropriations Committee)

PARKS AND RECREATION AND TOURISM

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department and the tourism department; to provide for an appropriation from the snowmobile fund and the trail tax transfer fund; and to provide statements of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department and the tourism department for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

Salaries and wages	$ 3,754,371
Information services	45,070
Operating expenses	2,145,341
Equipment	160,682
Capital improvements	1,359,454
Grants	1,003,333
Parks and historic sites improvements	1,424,182
Intermodal transportation	312,500
Total all funds	$10,204,933
Less estimated income	4,047,605
Total general fund appropriation	$ 6,157,328

Subdivision 2.

TOURISM DEPARTMENT

Salaries and wages	$ 782,033
Information services	54,865
Operating expenses	3,404,500
Equipment	15,378
Grants	60,000
Total all funds	$ 4,316,776
Less estimated income	180,000
Total general fund appropriation	$ 4,136,776

Grand total general fund appropriation H.B. 1014	$10,294,104
Grand total special funds appropriation H.B. 1014	$ 4,227,605
Grand total all funds H.B. 1014	$14,521,709

SECTION 2. SNOWMOBILE FUND. The amount of $240,000, or so much of the amount as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the snowmobile fund.

SECTION 3. TRAIL TAX TRANSFER FUND. The amount of $10,000, or so much of the amount as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the trail tax transfer fund.

SECTION 4. ADDITIONAL INCOME. All income of the parks and recreation department in excess of the estimated income appropriated in subdivision 1 of section 1 of this Act is hereby appropriated to the parks and recreation department for the biennium beginning July 1, 1993, and ending June 30, 1995, and may be spent only upon authorization of the emergency commission.

SECTION 5. LEGISLATIVE INTENT - INTERAGENCY COOPERATION. It is the intent of the legislative assembly that North Dakota tourism benefit from comprehensive planning and cooperation between the department of parks and recreation, tourism department, and the state historical society. It is the intent of the legislative assembly that a parks and historic sites improvements committee, consisting of the lieutenant governor as chairperson, one member of the senate appropriations committee and one member of the house of representatives appropriations committee each appointed by the legislative council, the director of the parks and recreation department, the director of the tourism department, and the president of the state historical board or the president's designee, determine the parks and historic sites improvement projects to be conducted for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. NORTH DAKOTA PARKS AND RECREATION - PARKS AND HISTORIC SITES IMPROVEMENTS. The parks and historic sites improvements line item in subdivision 1 of section 1 of this Act includes $1,194,182 from the general fund and $300,000 from special funds which the parks and recreation department and the state historical society shall use for purposes determined by the parks and historic sites improvements committee as provided in section 5 of this Act. With the approval of the director of parks and recreation and the director of the office of management and budget, the state historical society may spend funds from this line item for defraying the costs of parks and historic sites improvements conducted by the state historical society.

SECTION 7. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the tourism department, based on numbers of visitors and other factors, may close one of its visitor information centers after the 1994 tourism season.

SECTION 8. PARKS AND RECREATION - APPROPRIATION LIMITATION. Of the $1,128,682 appropriated from the general fund in the parks and historic sites improvements line item in subdivision 1 of section 1 of this Act, $100,000 of this amount is equal to the estimated amount of funds remaining unspent from the appropriation provided for the acquisition of the seventh-day adventist camp property adjacent to the Lake Metigoshe state park for the 1991-93 biennium contained in section 5 of 1991 Senate Bill No. 2016. Expenditure of funds pursuant to this $100,000 general fund appropriation may not exceed the amount of funds remaining unspent pursuant to the general fund appropriation contained in section 5 of 1991 Senate Bill No. 2016.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 15

HOUSE BILL NO. 1015
(Appropriations Committee)

WATER COMMISSION, SOIL CONSERVATION, AND CENTENNIAL TREES

AN ACT to provide an appropriation for defraying the expenses of the various divisions of the state water commission, the soil conservation committee, and the centennial trees commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions of the state water commission, the soil conservation committee, and the centennial trees commission for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

STATE WATER COMMISSION

Salaries and wages	$ 7,044,722
Information services	93,747
Operating expenses	7,478,650
Equipment	226,350
Capital improvements	26,600,000
Grants	9,297,509
Cooperative research	3,050,000
Total all funds	$53,790,978
Less estimated income	48,258,894
Total general fund appropriation	$ 5,532,084

Subdivision 2.

SOIL CONSERVATION COMMITTEE

Salaries and wages	$ 419,031
Information services	7,253
Operating expenses	60,558
Equipment	1,000
Grants	745,386
Total general fund appropriation	$ 1,233,228

Subdivision 3.

CENTENNIAL TREES COMMISSION

Salaries and wages	$ 105,368
Information services	2,123
Operating expenses	47,758
Total special funds appropriation	$ 155,249
Grand total general fund appropriation H.B. 1015	$ 6,765,312
Grand total special fund appropriation H.B. 1015	$48,414,143
Grand total all funds appropriation H.B. 1015	$55,179,455

SECTION 2. RESOURCES TRUST FUND. The amount of $11,501,581, or so much of the funds as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is available from the resources trust fund to the state water commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in subdivision 1 of section 1 of this Act must be disbursed by the commission in accordance with section 61-02-64.1.

SECTION 4. GRANTS. Section 54-44.1-11 does not apply to appropriations made for grants in subdivision 1 of section 1 of this Act. However, this exclusion is only in effect for the two-year period after June 30, 1995. Any unexpended funds after that period has elapsed must be transferred to the resources trust fund.

SECTION 5. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 1993-95 revenues are in excess of $11,501,581, any excess is hereby appropriated, subject to emergency commission approval, from the resources trust fund to the state water commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. SOLID WASTE MANAGEMENT FUND. The estimated income line item included in subdivision 1 of section 1 of this Act includes $140,000 which the state water commission may spend from the solid waste management fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 7. WATER USE FUND. The estimated income line item included in subdivision 1 of section 1 of this Act includes $30,000 which the state water commission may spend from the water use fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 8. SOUTHWEST PIPELINE OPERATION AND MAINTENANCE FUND. The estimated income line item included in subdivision 1 of section 1 of this Act includes $2,120,527 which the state water commission may spend from the southwest pipeline operation and maintenance fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 9. CENTENNIAL TREES PROGRAM - CENTENNIAL TREES PROGRAM TRUST FUND. The total special funds appropriation line item in subdivision 3 of section 1 of this Act includes $155,249, or so much of the sum as may be necessary, from the centennial trees program trust fund for operating costs of the centennial trees commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 10. CENTENNIAL TREES COMMISSION - PRIVATIZATION. The centennial trees commission, during the biennium beginning July 1, 1993, and ending June 30, 1995, shall study the feasibility of creating a private, nonprofit organization to conduct the programs and activities of the centennial trees commission and methods

of funding these programs and activities. The commission shall present a report of the commission's recommendations together with any legislation required to implement the commission's recommendations to the fifty-fourth legislative assembly.

SECTION 11. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the centennial trees commission present to the fifty-fourth legislative assembly its recommendation regarding the use of the balance in the centennial trees program trust fund on June 30, 1995.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 16

HOUSE BILL NO. 1016
(Appropriations Committee)

AGRICULTURAL PRODUCTS UTILIZATION COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the agricultural products utilization commission and for ethanol production incentives; to create and enact a new section to chapter 4-14.1 of the North Dakota Century Code, relating to administrative costs of the agricultural products utilization commission; to amend and reenact sections 4-14.1-02 and 4-14.1-03.1 of the North Dakota Century Code, relating to uses of the agricultural fuel tax fund and grant programs of the agricultural products utilization commission; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the agricultural products utilization commission for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 95,212
Information services	3,906
Operating expenses	116,164
Equipment	3,350
Research, utilization, and marketing grants	2,812,395
Ethanol incentive	3,650,000
Total special funds appropriation	$6,681,027

SECTION 2. APPROPRIATION. All income received in excess of the amounts appropriated in section 1 of this Act is hereby appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1993, and ending June 30, 1995. Any funds received require the approval of the emergency commission before they can be spent.

SECTION 3. AGRICULTURAL FUEL TAX FUND. The total special funds appropriation line item in section 1 of this Act includes $1,349,537, or so much of the amount as may be necessary, from the agricultural fuel tax fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION INCENTIVES. The total special funds appropriation line item in section 1 of this Act includes $3,657,000, or so much of the amount as may be necessary, from the highway tax distribution fund for the ethanol production incentive program. Of this amount, $3,650,000 is for the purpose of providing production incentives to North Dakota ethanol plants and $7,000 is for audits of the use of these funds for the biennium beginning July 1, 1993, and ending June 30, 1995. Distribution from the appropriation in section 1 of this Act to the producers of agriculturally derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state which is marketed by the producing plant to a distributor

or wholesaler for sale within North Dakota. For purposes of this section "gallon of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producers credit is being sought is to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. If two or more ethanol production plants are in operation in this state throughout the 1993-95 biennium, a single plant may not receive incentive payments of more than nine hundred fifty thousand dollars for production in either fiscal year of the 1993-95 biennium. However, during any time one of the plants eligible for production incentives is not in operation for thirty or more consecutive days, any other ethanol production plant that is in operation may receive up to one hundred fifty thousand dollars per thirty calendar days in incentive payments for production during such time and the annual incentive payment limitation is waived to the extent of payments received under the authority of this sentence. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1992, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant as to whether or not the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program.

SECTION 5. EXEMPTION. The funds appropriated in the research, utilization, and marketing grants line item in section 1 of this Act are not subject to the provisions of section 54-44.1-11 and any unexpended funds from this line item may be available for continued payment of grants awarded but not paid during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural products utilization commission - Administrative expenses. Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of needed personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds provided to the commission for grants each biennium excluding federal funds.

SECTION 7. AMENDMENT. Section 4-14.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-02. Agricultural fuel tax fund - Purposes ~~- Other funds~~. There is hereby created in the state treasury, a fund, to be known as the agricultural fuel tax fund, which must be used to fund programs for the enhancement of agricultural research, development, processing, and marketing. The fund must be used ~~for the following purposes:~~

~~1. Appropriation to the North Dakota agricultural products utilization commission for its necessary administrative expenses including expenses of members of the commission, employment of needed personnel, hiring of consultants, contracting with public or private entities for services, and other expenditures necessary to implement the purposes of this chapter.~~

~~2. Seventy-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts~~

~~necessary under subsection 1 must be made available for basic and applied research efforts regarding uses and processing for agricultural products and byproducts in consultation with the president of North Dakota state university and with the prior approval of the commission on each research proposal.~~

~~3. Twenty-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for utilization and marketing efforts in consultation with the commissioner of agriculture and with the prior approval of the commission on each marketing proposal.~~

~~4. Employment of needed personnel, hiring of consultants, and contracting with public entities or private parties for services as may be necessary to implement the policy and purposes of this chapter. The allocation of funds in subsections 2 and 3 may be changed by the agricultural products utilization commission, subject to emergency commission approval.~~

to defray the expenses of the North Dakota agricultural products utilization commission necessary to implement the purposes of this chapter.

SECTION 8. AMENDMENT. Section 4-14.1-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority - ~~Duties~~.

~~1.~~ The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources consistent with the purpose of this chapter.

~~2.~~ The commission ~~shall~~ may administer ~~a cooperative marketing grant program designed to encourage groups of agricultural producers to develop innovative marketing strategies. The commission shall adopt rules to implement this grant program.~~

~~3. The commission shall administer a farm diversification grant program designed to stimulate and foster diversification and innovation and to encourage value added processing. The commission shall adopt rules to implement this grant program~~ grant programs consistent with the purpose of this chapter including a basic and applied research grant program, utilization and marketing grant program, cooperative marketing grant program, farm diversification grant program, and a North American marketing grant program.

SECTION 9. LEGISLATIVE INTENT - ETHANOL PRODUCTION INCENTIVE PROGRAM REVENUE. It is the intent of the legislative assembly that the $3,657,000 appropriated from the highway tax distribution fund in section 1 of this Act is generated from additional revenue of $2,400,000 resulting from the amendment in section 1 of chapter 404 of the 1991 Session Laws of North Dakota, relating to motor vehicle registration fees and mile tax, and additional revenue of $1,257,000 resulting from the amendment in section 3 of chapter 404 of the 1991 Session Laws of North Dakota, relating to agricultural fuel tax refund reduction.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 17

HOUSE BILL NO. 1017
(Appropriations Committee)

WORKERS' COMPENSATION

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions; and to provide for authorization to expend funds from the workers' compensation contingency line item.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and the workers' compensation fund in the state treasury, not otherwise appropriated, to the workers compensation bureau for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

WORKERS COMPENSATION BUREAU

Salaries and wages	$ 9,625,310
Information services	1,417,052
Operating expenses	4,369,277
Equipment	1,152,559
Third-party administration	2,505,000
Imaging project	2,800,000
Workers' compensation contingency	1,008,867
All states coverage	1,000,000
Civil air patrol payment	10,373
Total all funds	$23,888,438
Less estimated income	23,878,065
Total general fund appropriation	$ 10,373

SECTION 2. SPECIAL FUNDS. The amount appropriated in section 1 of this Act includes $23,784,922 which is to be spent from the workers' compensation fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. WORKERS' COMPENSATION CONTINGENCY - EMERGENCY COMMISSION APPROVAL REQUIRED. The sums appropriated in section 1 of this Act for the workers' compensation contingency line item can be spent only upon authorization of the emergency commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 18

HOUSE BILL NO. 1018
(Appropriations Committee)

RETIREMENT AND INVESTMENT AGENCIES

AN ACT to provide an appropriation for defraying the expenses of various state retirement and investment agencies and to provide for transfers between line items and statements of intent regarding state employee salary increases and state agencies' information services line items.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	$1,410,511
Information services	288,039
Operating expenses	624,641
Equipment	20,000
Contingency	100,000
Contracted services	200,000
Total special funds appropriation	$2,643,191

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	$1,313,564
Information services	381,193
Operating expenses	623,256
Equipment	17,300
Contingency	40,000
Total special funds appropriation	$2,375,313
Grand total special funds appropriation H.B. 1018	$5,018,504

SECTION 2. TRANSFERS BETWEEN LINE ITEMS. Notwithstanding the provisions of chapter 54-16, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of an agency or institution upon the request of the agency or institution in order to provide funding for 3.0 percent employee salary increases for the second year of the 1993-95 biennium as provided in section 3 of this Act.

SECTION 3. LEGISLATIVE INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the legislative assembly that 1993-95 compensation adjustments for state employees are to be $60 per month beginning with the month of July 1993, to be paid in August 1993, and 3.0 percent beginning with the month of July 1994, to be paid in August 1994. The 3.0 percent adjustment during the second

year of the biennium may only be given to the extent that the increase can be paid without an increase in an agency's appropriation. State employees not on a probationary status are entitled to receive the increases provided in this section. Temporary and part-time employees must be provided pro rata increases in accordance with the number of hours worked. Pay grade maximums may not be used to limit the amount of any increases under this section. State agencies and institutions shall report to the office of management and budget the amounts provided for salary increases for the second year of the 1993-95 biennium and any amounts transferred between line items pursuant to section 2 of this Act. The office of management and budget shall report to the budget section at its first meeting after August 1, 1994, concerning the amounts provided by state agencies and institutions for salary increases for the second year of the biennium and line item transfers relating to the increases.

SECTION 4. LEGISLATIVE INTENT - INFORMATION SERVICES. It is the intent of the legislative assembly that state agencies and institutions' information services line items in total are to be reduced by $2,775,817, of which $1,085,060 is from the general fund and $1,690,757 is from other funds, from the amounts that were included in bills as introduced.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 19

HOUSE BILL NO. 1019
(Appropriations Committee)

STATE OFFICIALS AND INSTITUTIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, the sums as hereinafter provided or so much of the sums as may be necessary. These sums shall increase the general fund and special funds appropriation authority enacted by the fifty-second legislative assembly as adjusted by the allotment process to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 1993, and ending June 30, 1993, as follows:

Subdivision 1.

SECRETARY OF STATE

Information services	$ 593,000
Operating expenses	50,000
Total general fund appropriation	$ 643,000

Subdivision 2.

INDUSTRIAL COMMISSION

Operating expenses	$ 900,000
Total general fund appropriation	$ 900,000

Subdivision 3.

NORTH DAKOTA SCHOOL FOR THE BLIND

Salaries and wages	$ 125,000
Operating expenses	125,000
Total general fund appropriation	$ 250,000

Subdivision 4.

HOMESTEAD TAX CREDIT

Grants	$ 160,000
Total general fund appropriation	$ 160,000

Subdivision 5.

BOARD OF ANIMAL HEALTH

Salaries and wages	$ 9,747

Total general fund appropriation	$ 9,747

Subdivision 6.

DEPARTMENT OF CORRECTIONS AND REHABILITATION
STATE PENITENTIARY

Salaries and wages	$ 196,400
Operating expenses	294,050
Capital improvements	225,000
Total all funds	$ 715,450
Less estimated income	677,000
Total general fund appropriation	$ 38,450

PAROLE AND PROBATION

Salaries and wages	$ 13,134
Operating expenses	1,793
Total general fund appropriation	$ 14,927

DIVISION OF JUVENILE SERVICES

Salaries and wages	$ 50,000
Information services	10,000
Operating expenses	50,000
Total special fund appropriation	$ 110,000
Grand total general fund appropriation subdivision 6	$ 53,377
Grand total special funds appropriation subdivision 6	$ 787,000
Grand total all funds appropriation subdivision 6	$ 840,377

Subdivision 7.

OFFICE OF THE ATTORNEY GENERAL

State employee defense	$ 150,000
Total general fund appropriation	$ 150,000

Subdivision 8.

NORTH DAKOTA VETERANS' HOME

Salaries and wages	$ 37,392
Operating expenses	25,338
Capital improvements	8,485
Total all funds	$ 71,215
Less estimated income	8,485
Total general fund appropriation	$ 62,730

Subdivision 9.

AGRICULTURAL PRODUCTS UTILIZATION COMMISSION

Basic and applied research grants	$ 161,973
Marketing and utilization grants	84,183
Total special fund appropriation	$ 246,156

Subdivision 10.

DIVISION OF EMERGENCY MANAGEMENT

Equipment	$ 13,534
Grants	70,000
Total special fund appropriation	$ 83,534

Subdivision 11.

OFFICE OF ADMINISTRATIVE HEARINGS

Operating expenses	$ 31,575
Total general fund appropriation	$ 31,575
Grand total general fund appropriation H.B. 1019	$2,260,429
Grand total special funds appropriation H.B. 1019	$1,125,175
Grand total all funds appropriation H.B. 1019	$3,385,604

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

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 20

HOUSE BILL NO. 1020
(Appropriations Committee)

CAPITAL PROJECTS

AN ACT providing an appropriation for capital projects of various state departments and institutions; to authorize the state board of higher education to issue and sell self-liquidating tax-exempt bonds for capital projects; and to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - GENERAL FUND. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sums as hereinafter provided or so much of the sums as may be necessary to the stated departments and institutions of the state of North Dakota for the purpose of defraying their capital project expenses, for the period beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

NORTH DAKOTA VETERANS' HOME

Capital improvements	$ 40,600
Total general fund appropriation	$ 40,600

Subdivision 2.

DEPARTMENT OF CORRECTIONS AND REHABILITATION
STATE PENITENTIARY

Capital improvements	$ 85,400
Total general fund appropriation	$ 85,400

Subdivision 3.

NORTH DAKOTA STATE FAIR

Capital improvements	$ 210,000
Total general fund appropriation	$ 210,000

Subdivision 4.

INTERNATIONAL PEACE GARDEN

Capital improvements	$ 30,000
Total general fund appropriation	$ 30,000

SECTION 2. APPROPRIATION - SPECIAL FUNDS. There is hereby appropriated out of any special funds derived from federal funds and other income, the sums as hereinafter provided or so much of the sums as may be necessary to the stated departments and institutions of the state of North Dakota for the purpose of defraying their capital project expenses, for the period beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Capital improvements	$ 90,000
Total special funds appropriation	$ 90,000

Subdivision 2.

NORTH DAKOTA STATE UNIVERSITY

Capital improvements	$ 250,000
Total special funds appropriation	$ 250,000

Subdivision 3.

UNIVERSITY OF NORTH DAKOTA

Capital improvements	$ 4,065,035
Total special funds appropriation	$ 4,065,035

Subdivision 4.

MINOT STATE UNIVERSITY

Capital improvements	$ 2,000,000
Total special funds appropriation	$ 2,000,000

Subdivision 5.

DEPARTMENT OF CORRECTIONS AND REHABILITATION
ROUGHRIDER INDUSTRIES

Capital improvements	$ 390,000
Total special funds appropriation	$ 390,000

Subdivision 6.

STATE SEED DEPARTMENT

Capital improvements	$ 50,000
Total special funds appropriation	$ 50,000

Subdivision 7.

NORTHERN CROPS INSTITUTE

Capital improvements	$ 1,500,000
Total special funds appropriation	$ 1,500,000

Subdivision 8.

PARKS AND TOURISM

Capital improvements	$ 560,000
Total special funds appropriation	$ 560,000

Subdivision 9.

DEPARTMENT OF TRANSPORTATION

Capital improvements	$ 177,000
Total special funds appropriation	$ 177,000
Grand total general fund appropriation H.B. 1020	$ 366,000
Grand total special funds appropriation H.B. 1020	$27,422,943
Grand total all funds appropriation H.B. 1020	$27,788,943

SECTION 3. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES. The state board of higher education, in accordance with chapter 15-55, may issue and sell self-liquidating tax-exempt bonds in an amount not exceeding $6,315,035, for the purpose of constructing the capital projects at institutions under the control of the board named in section 2 of this Act, including an amount not exceeding $250,000 for an addition to the varsity mart at North Dakota state university, $3,565,035 to renovate McCannel hall, $500,000 for a parking lot at the university of North Dakota, and $2,000,000 for an addition to the student center at Minot state

university. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 4. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 3, or so much of the sum as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the construction and equipment of the facilities named in section 3. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

SECTION 5. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission, acting as the state building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of evidences of indebtedness under North Dakota Century Code chapter 54-17.2, during the biennium beginning July 1, 1993, and ending June 30, 1995. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 1993, and ending June 30, 1995, for the following projects:

NAME OF AGENCY, DEPARTMENT, OR INSTITUTION	TYPE OF FACILITY	CONSTRUCTION/ ACQUISITION FUNDS
Job service North Dakota	Office building	$ 1,735,000
Minot state university	Memorial library	2,550,000
North Dakota university system	Capital construction projects, including handicapped accessibility projects and special assessments	8,630,908
Industrial school	Building demolition and asbestos removal from tunnel system	250,000
Adjutant general	Grand Forks armory and other projects	375,000
Total		$13,540,908

The industrial commission shall issue evidences of indebtedness authorized under this section with the condition that lease rental payments need not begin until July 1, 1995. This authority of the industrial commission to issue evidences of indebtedness ends on June 30, 1995, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date. Any unexpended balances from the sale of evidences of indebtedness must be placed in a sinking fund for the retirement of authorized evidences of indebtedness.

The state board of higher education may obtain and utilize federal funds to assist in remodeling and expanding the former library at Minot state university. There is hereby appropriated to the state board of higher education the sum of $4,800,000, or so much of the sum as may be necessary, from any federal or other funds that may become available for this project for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. PAYMENT OF MATCHING SHARE. Of the total amount of evidences of indebtedness issued under the provisions of section 5 of this Act, a total of

$1,990,000 from nongeneral fund sources will become available to assist in the retirement of the evidences of indebtedness, issued for the project costs associated with construction of the projects authorized by this Act.

Minot state university	Memorial library	255,000
Job service North Dakota	Office building	1,735,000
Total		$1,990,000

Minot state university shall pay fifty percent of its local matching share to the industrial commission by June 30, 1996, and the remaining fifty percent of the local matching amount in six equal annual installments beginning after fiscal year 1996, and may prepay any or all of its matching share. Job service North Dakota shall pay its matching share to the industrial commission in equal annual installments over the life of the issue. Such payments of local matching amounts must be deposited in a special industrial commission account from which the industrial commission shall use the funds in making principal and interest payments.

SECTION 7. INTENT. It is the intent of the fifty-third legislative assembly that no institution in the North Dakota university system, which sells computers and provides warranty services for computers shall enter the business in competition with the private sector of providing computer repair services to students for nonwarranty computer repairs.

SECTION 8. INTENT. It is the intent of the fifty-third legislative assembly that the state board of higher education present to the fifty-fourth legislative assembly its proposal for major capital projects at the university of North Dakota - Lake Region, the university of North Dakota - Williston center, North Dakota state university - Bottineau, Dickinson state university, Bismarck state college, University of North Dakota and Valley City state university.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 21

HOUSE BILL NO. 1065
(Appropriations Committee)

AGRICULTURAL BOARDS, COUNCILS, AND COMMISSIONS

AN ACT making an appropriation for defraying the expenses of various agricultural boards, councils, and commissions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the agricultural boards, councils, and commissions listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

EDIBLE BEAN COUNCIL

Operating expenses	$ 600,000
Total appropriation from edible bean fund	$ 600,000

Subdivision 2.

OILSEED COUNCIL

Salaries and wages	$ 71,817
Information services	56,254
Operating expenses	1,868,996
Equipment	7,000
Total appropriation from oilseed fund	$2,004,067

Subdivision 3.

HONEY PROMOTION FUND

Operating expenses	$ 30,000
Total appropriation from honey promotion fund	$ 30,000

Subdivision 4.

STATE POTATO COUNCIL

Operating expenses	$1,200,000
Total appropriation from spud fund	$1,200,000

Subdivision 5.

CORN UTILIZATION COUNCIL

Operating expenses	$ 600,000
Total appropriation from corn fund	$ 600,000

Subdivision 6.

TURKEY FUND

Operating expenses	$ 55,000
Total appropriation from turkey promotion fund	$ 55,000

Subdivision 7.

STATE WHEAT COMMISSION

Salaries and wages	$ 717,271
Information services	13,380
Operating expenses	2,485,120
Grants to state agencies	432,340
Equipment	25,000
Total appropriation from wheat promotion fund	$3,673,111

Subdivision 8.

MILK STABILIZATION BOARD

Salaries and wages	$ 364,442
Information services	6,200
Operating expenses	129,252
Equipment	6,480
Total appropriation from milk stabilization fund	$ 506,374
Grand total special funds appropriation H.B. 1065	$8,668,552

SECTION 2. APPROPRIATION. In addition to the appropriations provided in section 1 of this Act, all funds as may be on deposit in the various special funds for which appropriations are made in section 1 are hereby appropriated and can be spent only upon authorization of the emergency commission for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 22

HOUSE BILL NO. 1519
(Representatives R. Berg, Gates, Payne, Price, Rydell, Wald)
(Approved by the Delayed Bills Committee)

BOARD OF HIGHER EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system and the various institutions of higher learning under the supervision of the state board of higher education, to provide an exemption to the provisions of section 54-44.1-11, and to authorize the state board of higher education to convey certain state-owned land to Ramsey County, North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the state board of higher education and to the various institutions of higher learning under the supervision of the state board of higher education for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

Salaries and wages	$ 1,781,948
Information services	79,009
Operating expenses	429,900
Equipment	24,150
Computer network management	188,000
Higher education contingency fund	92,168
Professional student exchange program	1,108,870
Experimental program to stimulate competitive research	4,980,000
Scholars program	642,240
Perkins loan program match	102,885
Title II grant	300,000
Paul Douglas scholarship	99,420
Student financial assistance grants	3,943,086
Disabled student services	50,000
Native American scholarships	200,000
College technical administration	150,000
Total all funds	$ 14,171,676
Less estimated income	4,949,420
Total general fund appropriation	$ 9,222,256

Subdivision 2.

BISMARCK STATE COLLEGE

Salaries and wages	$ 13,120,260
Operating expenses	3,274,959

Equipment	433,271
Capital improvements	317,354
Total all funds	$ 17,145,844
Less estimated income	8,333,130
Total general fund appropriation	$ 8,812,714

Subdivision 3.

UNIVERSITY OF NORTH DAKOTA-LAKE REGION

Salaries and wages	$ 3,719,797
Operating expenses	1,158,763
Equipment	122,631
Capital improvements	41,333
Total all funds	$ 5,042,524
Less estimated income	2,039,656
Total general fund appropriation	$ 3,002,868

Subdivision 4.

UNIVERSITY OF NORTH DAKOTA - WILLISTON

Salaries and wages	$ 4,296,707
Operating expenses	1,173,587
Equipment	238,766
Capital improvements	150,880
Total all funds	$ 5,859,940
Less estimated income	2,989,753
Total general fund appropriation	$ 2,870,187

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Salaries and wages	$ 92,879,513
Operating expenses	26,023,217
Equipment	2,154,002
Capital improvements	2,000,000
Interactive video network	1,831,190
Total all funds	$124,887,922
Less estimated income	49,114,063
Total general fund appropriation	$ 75,773,859

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

Salaries and wages	$ 73,651,942
Operating expenses	21,691,055
Equipment	2,038,242
Capital improvements	1,370,940
Total all funds	$ 98,752,179
Less estimated income	39,242,039
Total general fund appropriation	$ 59,510,140

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Salaries and wages	$ 19,390,920
Operating expenses	5,355,464
Equipment	1,068,285
Capital improvements	386,782
Total all funds	$ 26,201,451

Less estimated income	7,015,638
Total general fund appropriation	$ 19,185,813

Subdivision 8.

DICKINSON STATE UNIVERSITY

Salaries and wages	$ 11,644,301
Operating expenses	3,171,605
Equipment	277,787
Capital improvements	245,899
Total all funds	$ 15,339,592
Less estimated income	5,599,113
Total general fund appropriation	$ 9,740,479

Subdivision 9.

MAYVILLE STATE UNIVERSITY

Salaries and wages	$ 7,104,730
Operating expenses	1,865,809
Equipment	83,344
Capital improvements	80,000
Total all funds	$ 9,133,883
Less estimated income	2,622,459
Total general fund appropriation	$ 6,511,424

Subdivision 10.

MINOT STATE UNIVERSITY

Salaries and wages	$ 25,656,129
Operating expenses	4,805,237
Equipment	669,382
Capital improvements	670,668
Total all funds	$ 31,801,416
Less estimated income	13,776,567
Total general fund appropriation	$ 18,024,849

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Salaries and wages	$ 9,286,197
Operating expenses	2,227,364
Equipment	197,502
Capital improvements	230,000
Special initiatives	250,000
Total all funds	$ 12,191,063
Less estimated income	3,466,540
Total general fund appropriation	$ 8,724,523

Subdivision 12.

NORTH DAKOTA STATE UNIVERSITY - BOTTINEAU

Salaries and wages	$ 3,391,858
Operating expenses	898,374
Equipment	92,280
Capital improvements	76,050
Total all funds	$ 4,458,562
Less estimated income	1,380,316
Total general fund appropriation	$ 3,078,246

Subdivision 13.

NORTH DAKOTA FOREST SERVICE

Salaries and wages	$ 1,539,161
Operating expenses	367,148
Equipment	36,976
Capital improvements	31,061
Total all funds	$ 1,974,346
Less estimated income	663,040
Total general fund appropriation	$ 1,311,306

Subdivision 14.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Salaries and wages	$ 43,355,211
Operating expenses	15,866,050
Equipment	1,747,887
Total all funds	$ 60,969,148
Less estimated income	35,687,469
Total general fund appropriation	$ 25,281,679

Subdivision 15.

MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	$ 17,049,762
Operating expenses	8,085,572
Equipment	526,356
Total appropriation from institutional income	$ 25,661,690

Grand total general fund appropriation	$251,050,343
Grand total special funds appropriation	$202,540,893
Grand total all funds appropriation	$453,591,236

SECTION 2. APPROPRIATION TRANSFER. The higher education contingency fund, disabled student services, and system capital projects in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 1 through 15 of section 1 as determined by the state board of higher education. The board shall notify the office of management and budget of the allocation of general fund authority from the higher education contingency fund, disabled student services, and system capital projects to the various entities and institutions and which line items in the various institutions and entities shall be adjusted.

SECTION 3. APPROPRIATION. All operating fund income received in excess of the estimated income line item appropriated to the entities in section 1 of this Act which is deposited in their respective operating funds in the state treasury is hereby appropriated. Any excess estimated income up to the following amounts may be spent subject to board of higher education approval:

INSTITUTION	AMOUNT
Bismarck state college	$ 249,994
University of North Dakota - Lake Region	61,190
University of North Dakota - Williston	89,692
University of North Dakota	1,473,422
North Dakota state university	1,177,261
North Dakota state college of science	210,469
Dickinson state university	167,973
Mayville state university	78,674

Minot state university	413,297
Valley City state university	103,996
North Dakota state university - Bottineau	41,409
North Dakota forest service	19,891
University of North Dakota medical center	1,070,624
Medical center rehabilitation hospital	769,851
Total	$5,927,743

Any additional excess estimated income can be spent only upon authorization of the emergency commission. Any funds received by the board of higher education and the entities of the North Dakota university system pursuant to federal acts, private grants, and other sources not deposited in the operating funds in the state treasury are hereby appropriated for the period beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. TRANSFERS. Each institution or agency included in subdivisions 1 through 15 of section 1, upon approval of the state board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board for operations of the institution or agency. The board shall notify the office of management and budget of each transfer.

SECTION 5. EXEMPTION. The operating expenses line items, scholars program, higher education contingency fund, student financial assistance grants, and professional student exchange program appropriations contained in subdivision 1 of section 1 of chapter 3 of the 1991 Session Laws of North Dakota shall not be subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations shall be available during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. DEPOSIT OF FUNDS. Funds received from Minnesota by the board of higher education pursuant to the reimbursement provisions of the Minnesota-North Dakota public higher education and vocational technical education tuition reciprocity agreement authorized by chapter 15-10.1 shall be deposited in the board of higher education special revenue fund in the state treasury. These funds shall be used for the North Dakota student financial assistance program authorized by chapter 15-62.2.

SECTION 7. LEGISLATIVE INTENT. The legislative assembly recognizes the appropriations in section 1 may be insufficient to provide for both full funding of faculty and staff positions and for 1994-95 salary adjustments. Therefore, it intends that the board of higher education take such action as it considers necessary to allocate the funding to maintain quality academic programs.

SECTION 8. TRAINING - SALARIES. The amounts included in the institutions appropriations for training funding in section 1 may be used within each institution as determined appropriate by the board of higher education and the institutions for 1994-95 salary adjustments.

SECTION 9. LEGISLATIVE INTENT - ADMINISTRATIVE STREAMLINING. The legislative assembly supports the board of higher education's goal to reduce and streamline administrative functions within the entities under the board's control. In making personnel reductions which will be required at the levels appropriated, it is the intent of the legislative assembly that the board first make reductions in

administrative areas before eliminating positions directly related to instruction and student services.

SECTION 10. LEGISLATIVE INTENT - COMPARABLE PROGRAMS. The legislative assembly expresses its concern to the board of higher education regarding institutional expenditures to seek national accreditation of programs where comparable programs have already received national accreditation at other institutions.

SECTION 11. TRANSFER OF LAND BY STATE BOARD OF HIGHER EDUCATION.

1. The state board of higher education may convey to Ramsey County, North Dakota, land owned by the state under the jurisdiction of the state board of higher education which is located in Ramsey County and described as follows:

   All that part of section eighteen, township one hundred fifty-three north of range sixty-four west in Ramsey County, North Dakota, described as follows:

   Beginning at the southwest corner of lot one, block one, Lake Front Park Addition of Devils Lake Chautauqua Association of North Dakota, now known as Lakewood Park of the City of Devils Lake, thence west to the west side of Ramsey County Highway No. 1 right of way, which is the point of beginning, thence in a southerly direction following the right of way a distance of one hundred feet, thence west to the ordinary high water mark of Devils Lake, thence in a northerly direction along the ordinary high water mark a distance of three hundred feet, thence east to the west right-of-way line of Ramsey County Highway No. 1, thence in a southerly direction along the right of way to the point of beginning.

2. The conveyance authorized by this Act is not subject to North Dakota Century Code sections 54-01-05.2 and 54-01-05.5.

3. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required by the conveyance authorized by this Act.

4. Before the board of higher education may convey the property as authorized by subsection 1, the board shall submit the terms of the transfer to the budget section of the legislative council. The board may convey the property only after the budget section has approved the terms of the transfer.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 23

SENATE BILL NO. 2001
(Appropriations Committee)

LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; to amend and reenact subsection 2 of section 28-32-03, section 28-32-03.1, and subsections 3 and 4 of section 28-32-03.2 of the North Dakota Century Code, relating to publication of the administrative code; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose of defraying the expenses of that branch, for the fiscal period beginning with the effective date of this Act and ending June 30, 1995, as follows:

Subdivision 1.
FIFTY-THIRD AND FIFTY-FOURTH LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	$ 3,944,635
Operating expenses	1,862,734
Equipment	33,568
National conference of state legislatures	125,470
Total general fund appropriation	$ 5,966,407

Subdivision 2.
LEGISLATIVE COUNCIL

Salaries and wages	$ 3,101,222
Operating expenses	1,307,648
Equipment	11,825
Total general fund appropriation	$ 4,420,695

Grand total general fund appropriation	$10,387,102

SECTION 2. AMENDMENT. Subsection 2 of section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council become effective the first day of the month after the month of publication as provided for in section 28-32-03.1, except that if a later date is required by statute or specified in the rule, the later date is the effective date. If publication is delayed due to technological problems or lack of funds, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month publication would have occurred but for the delay.

SECTION 3. AMENDMENT. Section 28-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-03.1. Administrative code and code supplement.

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the committee on administrative rules pursuant to section 28-32-03.3. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise the code, or any part thereof, as often as the legislative council deems necessary.

2. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are resolved or the necessary funds are available.

   a. The code supplement must contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.

   b. The code supplement must contain all objections filed with the office of the legislative council by the committee on administrative rules pursuant to section 28-32-03.3.

   c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

3. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

4. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may ~~make arrangements with the office of the legislative council for the printing of~~ print as many copies of such separate portions of the code as it may require. ~~The cost of any such separate portions must be paid by the agency.~~ If the office of the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to

any person upon request. The agency may charge for the actual cost of providing copies of the rules.

SECTION 4. AMENDMENT. Subsections 3 and 4 of section 28-32-03.2 of the North Dakota Century Code are amended and reenacted as follows:

3. The secretary of state shall make copies of and subscriptions to the code~~, revisions thereto,~~ and ~~the~~ code supplement available to any person ~~at prices fixed to cover publication and distribution costs~~ upon payment of the appropriate subscription fee.

4. The office of the legislative council shall determine the ~~cost of supplying copies of~~ appropriate fee for subscribing to the code~~, revisions thereto,~~ and ~~the~~ code supplement. ~~Such cost must be the approximate cost of publication and distribution. However, a uniform price per page or group of pages may be established without regard to differences in the cost of publishing different parts of the code, revisions thereto, and the code supplement.~~

SECTION 5. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or the chairman's designee upon the finding by the chairman or designee that the nature of studies and duties assigned to the council requires the transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fifty-third and fifty-fourth legislative assemblies, upon request by the chairman of the legislative council or the chairman's designee upon the finding by the chairman or designee that the transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 24

SENATE BILL NO. 2002
(Appropriations Committee)

JUDICIAL BRANCH

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to create and enact a new subsection to section 27-05-06 of the North Dakota Century Code, relating to jurisdiction of the district court; to amend and reenact the new section to chapter 11-20 of the North Dakota Century Code, as created by section 1 of House Bill No. 1501, as approved by the fifty-third legislative assembly, relating to the jurisdiction of the district court; to amend and reenact section 15 of chapter 374 of the 1987 Session Laws of North Dakota, as amended by section 1 of chapter 379 of the 1989 Session Laws of North Dakota, relating to the expiration date for legislation creating a temporary court of appeals; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the judicial branch for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	$ 4,258,269
Information services	167,910
Operating expenses	1,204,310
Equipment	99,565
Judges retirement	375,233
Total all funds	$ 6,105,287
Less estimated income	46,639
Total general fund appropriation	$ 6,058,648

Subdivision 2.

TRIAL COURTS

Salaries and wages	$14,533,734
Information services	49,190
Operating expenses	4,317,805
Equipment	338,272
Judges retirement	858,960
Total all funds	$20,097,961
Less estimated income	185,258
Total general fund appropriation	$19,912,703

Subdivision 3.

JUDICIAL CONDUCT COMMISSION
AND DISCIPLINARY BOARD

Salaries and wages	$ 322,768
Information services	9,650
Operating expenses	124,000
Equipment	11,250
Total all funds	$ 467,668
Less estimated income	72,000
Total general fund appropriation	$ 395,668
Grand total general fund appropriation S.B. 2002	$26,367,019
Grand total special funds appropriation S.B. 2002	$ 303,897
Grand total all funds appropriation S.B. 2002	$26,670,916

SECTION 2. APPROPRIATION. There is hereby appropriated any funds received by the supreme court and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in such federal acts or private gifts, grants, and donations for the period beginning July 1, 1993, and ending June 30, 1995.

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

SECTION 4. AMENDMENT. The new section to chapter 11-20 of the North Dakota Century Code, as created by section 1 of House Bill No. 1501, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

Disputed property lines - Petition to ~~county~~ district court - Effect of survey - Payment of expenses.

1. One or more owners of property may file with the clerk of ~~county~~ district court a petition requesting the ~~county~~ district court to direct the county surveyor to survey the property. The ~~county~~ court shall set a time and place for a hearing on the petition. The hearing may not occur until three weeks after the petitioner has published notice of the petition, containing the substance of the petition, a description of the lands affected, and the names of the owners of the affected lands as they appear in the latest tax roll, and after the petitioner has mailed written notice to each occupant of land affected by the survey.

2. At the hearing on the petition, all interested parties may appear and be heard. If the ~~county~~ district court finds that there is a dispute as to the location of a property line, the ~~county~~ court may grant the petition. If a county surveyor is not available to conduct the survey, the ~~county~~ court may appoint a registered land surveyor to conduct the survey. The surveyor shall provide reasonable advance written notice to occupants of affected lands specifying the date when the survey will begin.

3. After the survey has been completed, the surveyor shall file a record of survey under sections 11-20-12 and 11-20-13. The certificate of the

surveyor is presumptive evidence of the facts contained in the survey and certificate.

4. After the survey has been completed, the surveyor shall make a certified report to the ~~county~~ district court showing in detail the entire expense of the survey with recommendations as to apportionment of the expense. The ~~county~~ court shall apportion equitably the expense of the survey to the several tracts affected and provide written notice of the proposed assessment to each owner affected. The notice ~~shall~~ must inform the affected owners of their right to appear in ~~county~~ district court no sooner than fourteen days after the notices are mailed to object to the assessments. Following consideration of any objections, the ~~county~~ court shall make any corrections or adjustments necessary, enter an order confirming the assessment, and order the parties to pay the surveyor within thirty days.

5. Upon certification by the surveyor that an affected owner has not paid the fees ordered by the ~~county~~ district court within thirty days, the county auditor shall assess the amount against the land of each person affected. The county treasurer shall collect the assessments in the same manner as general property taxes are collected. On the order of the county auditor, the county treasurer shall pay any fees and expenses to a registered land surveyor who has conducted the survey.

SECTION 5. A new subsection to section 27-05-06 of the North Dakota Century Code is created and enacted as follows:

Disputed property line proceedings pursuant to section 4 of this Act.

SECTION 6. AMENDMENT. Section 15 of chapter 374 of the 1987 Session Laws of North Dakota, as amended by section 1 of chapter 379 of the 1989 Session Laws of North Dakota, is amended and reenacted as follows:

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, ~~1994~~ 1996, and after that date is ineffective.

SECTION 7. EFFECTIVE DATE. Sections 4 and 5 of this Act become effective on January 2, 1995.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 25

SENATE BILL NO. 2004
(Appropriations Committee)

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

AN ACT making an appropriation for defraying the expenses of the upper great plains transportation institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the upper great plains transportation institute for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$2,140,436
Operating expenses	677,950
Equipment	45,000
Grants	2,410,000
Grants to state agencies	150,000
Total all funds	$5,423,386
Less estimated income	5,022,015
Total general fund appropriation	$ 401,371

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the upper great plains transportation institute except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation.

SECTION 3. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items in section 1 of this Act, and shall notify the office of management and budget within ten days following such transfer.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 26

SENATE BILL NO. 2005
(Appropriations Committee)

EXTENSION SERVICE, CROPS INSTITUTE, AND EXPERIMENT STATIONS

AN ACT making an appropriation for defraying the expenses of the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station; and to provide statements of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.
NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Salaries and wages	$18,205,201
Operating expenses	3,333,000
Equipment	400,000
Total all funds	$21,938,201
Less estimated income	11,889,529
Total general fund appropriation	$10,048,672

Subdivision 2.
NORTHERN CROPS INSTITUTE

Salaries and wages	$ 711,655
Operating expenses	112,400
Equipment	70,000
Total all funds	$ 894,055
Less estimated income	317,557
Total general fund appropriation	$ 576,498

Subdivision 3.
MAIN RESEARCH STATION

Salaries and wages	$31,089,443
Operating expenses	3,976,978
Equipment	1,397,746
Capital improvements	653,800
Animal replacement	300,000
Total all funds	$37,417,967
Less estimated income	16,493,699
Total general fund appropriation	$20,924,268

Subdivision 4.

DICKINSON RESEARCH CENTER

Salaries and wages	$ 981,689
Operating expenses	420,103
Equipment	39,076
Total all funds	$ 1,440,868
Less estimated income	431,676
Total general fund appropriation	$ 1,009,192

Subdivision 5.

CENTRAL GRASSLANDS RESEARCH CENTER

Salaries and wages	$ 437,639
Operating expenses	358,593
Equipment	75,193
Total all funds	$ 871,425
Less estimated income	347,900
Total general fund appropriation	$ 523,525

Subdivision 6.

HETTINGER RESEARCH CENTER

Salaries and wages	$ 484,643
Operating expenses	187,567
Equipment	72,600
Total all funds	$ 744,810
Less estimated income	233,486
Total general fund appropriation	$ 511,324

Subdivision 7.

LANGDON RESEARCH CENTER

Salaries and wages	$ 548,298
Operating expenses	163,862
Equipment	42,800
Total all funds	$ 754,960
Less estimated income	172,630
Total general fund appropriation	$ 582,330

Subdivision 8.

NORTH CENTRAL RESEARCH CENTER

Salaries and wages	$ 437,026
Operating expenses	232,563
Equipment	41,200
Total all funds	$ 710,789
Less estimated income	329,100
Total general fund appropriation	$ 381,689

Subdivision 9.

WILLISTON RESEARCH CENTER

Salaries and wages	$ 650,104
Operating expenses	130,372
Equipment	63,900
Total all funds	$ 844,376
Less estimated income	312,775
Total general fund appropriation	$ 531,601

Subdivision 10.

CARRINGTON RESEARCH CENTER

Salaries and wages	$ 1,192,279
Operating expenses	554,792
Equipment	106,250
Total all funds	$ 1,853,321
Less estimated income	955,723
Total general fund appropriation	$ 897,598

Subdivision 11.

AGRONOMY SEED FARM

Salaries and wages	$ 276,640
Operating expenses	376,500
Equipment	157,000
Total special funds appropriation	$ 810,140

Subdivision 12.

LAND RECLAMATION RESEARCH CENTER

Salaries and wages	$ 1,244,067
Operating expenses	130,000
Equipment	50,000
Total all funds	$ 1,424,067
Less estimated income	1,134,245
Total general fund appropriation	$ 289,822

Grand total general fund appropriation S.B. 2005	$36,276,519
Grand total special funds appropriation S.B. 2005	$33,428,460
Grand total all funds appropriation S.B. 2005	$69,704,979

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal goverment and gifts and donations from private sources received by the North Dakota agricultural experiment station, northern crops institute, and the North Dakota state university extension service, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. All of the moneys in the operating fund must remain in such fund until expended pursuant to any specific legislative appropriation or an authorization from the emergency commission, and the balances of such moneys except those received from the federal government or as gifts from private sources, must be used to reduce the amount of moneys to be expended pursuant to the general fund appropriation only to the extent that the unencumbered balance in the operating fund on June 30, 1993, exceeds the estimated income for the biennium ending June 30, 1995.

SECTION 3. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items for each agency included in section 1 of this Act and shall notify the office of management and budget within ten days following such transfer.

SECTION 4. TRANSFER AUTHORITY. Upon approval of the state board of higher education and the emergency commission, the director of the North Dakota agricultural experiment station may transfer appropriation authority between agencies included in subdivisions 2 through 12 of section 1 of this Act.

SECTION 5. STORAGE FACILITIES. Structures for storage of agricultural products may be authorized for construction by the state board of higher education when such structures do not exceed $50,000 in cost.

SECTION 6. LEGISLATIVE INTENT - EXTENSION SERVICE. It is the intent of the legislative assembly that during the 1993-95 biennium, the North Dakota state university extension service, by assisting counties to cooperate and collaborate for purposes of providing extension services, develop and implement more efficient methods of providing extension services throughout the state.

SECTION 7. LAND RECLAMATION RESEARCH CENTER - 1993-95 BIENNIUM REPORTS. The land reclamation research center shall file an annual report with the legislative council and the lignite research council on August 1, 1993, and August 1, 1994. The annual report must contain a description and analysis of the conclusions reached from each reclamation research project that has been completed during the preceding fiscal year and a brief description and analysis of any conclusions reached from all ongoing projects. The report must also include any recommendations for reducing unneccessary and duplicative regulatory costs that do not contribute to effective reclamation practices.

The land reclamation research center, in consultation with the lignite research council, shall report to the budget section of the legislative council in October 1994 on additional reclamation research needed, if any, to reduce unnecessary and duplicative regulatory costs involved in the reclamation process and on general fund appropriations needed, if any, to continue operating the land reclamation research center for the 1995-97 biennium.

SECTION 8. LEGISLATIVE INTENT - SEPARATE BUDGETS. It is the intent of the legislative assembly that funds appropriated in this Act not be commingled with the funds appropriated to North Dakota state university in House Bill No. 1519 for the biennium beginning July 1, 1993, and ending June 30, 1995. Further, it is the intent of the legislative assembly that appropriation requests to defray the expenses of the North Dakota state university extension service, the northern crops institute, and the entities of the North Dakota agricultural experiment station for the 1995-97 biennium be separate from the appropriation request for funding the higher education institutions under the control of the board of higher education.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 27

SENATE BILL NO. 2006
(Appropriations Committee)

DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES

AN ACT to provide an appropriation for defraying the expenses of the state department of health and consolidated laboratories; to provide a statement regarding the disbursement of domestic violence prevention grants; to provide for appropriations from the abandoned motor vehicle disposal fund, solid waste management fund, environment and rangeland protection fund, and domestic violence fund; to create and enact nine new subsections to section 23-09-01 of the North Dakota Century Code, relating to food establishments, hotels, lodginghouses, restaurants, and boardinghouses; to amend and reenact subsection 1 of section 19-02.1-24, sections 23-09-11, 23-09-17, 23-09-18, 23-09-19, 23-09.1-03, 23-10-05, and 61-28.2-01 of the North Dakota Century Code, relating to license fees and inspections by the department of health and consolidated laboratories and to the water pollution control revolving loan fund program; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of health and consolidated laboratories for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$22,296,250
Information services	491,703
Operating expenses	25,787,229
Equipment	845,976
Grants	11,981,168
Grants to state agencies	820,000
Abandoned motor vehicle	400,000
Physician loan program	80,000
Total all funds	$62,702,326
Less estimated income	47,571,082
Total general fund appropriation	$15,131,244

SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item in section 1 of this Act includes $400,000, or so much of the sum as may be necessary, to be made available to the state department of health and consolidated laboratories from the abandoned motor vehicle disposal fund, pursuant to section 39-26-11 for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. SOLID WASTE MANAGEMENT FUND. The estimated income line item included in section 1 of this Act includes $700,000, or so much of the sum as may be

necessary, to be made available to the state department of health and consolidated laboratories from the solid waste management fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes $200,000, or so much of the sum as may be necessary, to be made available to the state department of health and consolidated laboratories from the environment and rangeland protection fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 5. DOMESTIC VIOLENCE PREVENTION FUND. The estimated income line item included in section 1 of this Act includes $414,753, or so much of the sum as may be necessary, to be made available to the state department of health and consolidated laboratories from the domestic violence prevention fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 6. DOMESTIC VIOLENCE PREVENTION GRANT DISTRIBUTION. The domestic violence grants funded from the domestic violence prevention fund and the general fund in section 1 of this Act must be disbursed quarterly as grants to local nonprofit agencies. The department of health and consolidated laboratories shall not disburse the funds on a cost reimbursement basis.

SECTION 7. AMENDMENT. Subsection 1 of section 19-02.1-24 of the North Dakota Century Code is amended and reenacted as follows:

1. No establishment may sell any type of prepackaged food from a food vending machine without first obtaining a license from the department. A license may be issued upon payment of a fee of ~~ten~~ fifteen dollars annually. The license expires on June thirtieth of each year.

SECTION 8. Nine new subsections to section 23-09-01 of the North Dakota Century Code are created and enacted as follows:

"Bakery" means an establishment or any part of an establishment which manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.

"Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.

"Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.

"Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.

"Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.

"Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.

"Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.

"Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.

"Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

SECTION 9. AMENDMENT. Section 23-09-11 of the North Dakota Century Code is amended and reenacted as follows:

23-09-11. Inspection - ~~Records kept~~ Reports. Every hotel, restaurant, lodginghouse, and boardinghouse must be inspected once ~~in each year~~ every two years by the ~~state~~ department ~~of health and consolidated laboratories~~. The department and its inspectors ~~are granted police power to~~ may enter any such establishment at reasonable hours to determine ~~whether the provisions of~~ compliance with this chapter ~~are being complied with. The state department of health and consolidated laboratories shall keep a complete set of books for public use and inspection showing the condition of each establishment inspected, the name of the proprietor thereof, and its sanitary condition, the number and condition of its fire escapes, and any other information which may be required for the betterment of the public service~~.

SECTION 10. AMENDMENT. Section 23-09-17 of the North Dakota Century Code is amended and reenacted as follows:

23-09-17. License fees. The following annual license fees must be paid to the ~~state~~ department ~~of health and consolidated laboratories~~ by proprietors of hotels, restaurants, boardinghouses, ~~and~~ lodginghouses, and other food and food service establishments:

1. For a ~~restaurant, limited restaurant, or boardinghouse, ten dollars~~ hotel or lodginghouse containing not more than three sleeping rooms, twenty dollars.
2. For a hotel or lodginghouse containing at least four but not more than ten sleeping rooms, ~~five~~ thirty dollars.
3. For a hotel or lodginghouse containing more than ten sleeping rooms and not more than twenty sleeping rooms, ~~ten~~ forty-five dollars.
4. For a hotel or lodginghouse containing more than twenty sleeping rooms and not more than fifty sleeping rooms, ~~twenty~~ sixty dollars.
5. For a hotel or lodginghouse containing fifty-one sleeping rooms or more, ~~forty~~ eighty dollars.
6. For a restaurant or boardinghouse with a seating capacity of less than seventy-five, thirty-five dollars.
7. For a restaurant or boardinghouse with a seating capacity of seventy-five to not more than one hundred fifty, forty-five dollars.
8. For a restaurant or boardinghouse with a seating capacity of of more than one hundred fifty, fifty-five dollars.
9. For a limited retaurant, twenty-five dollars.
10. For a retail food store, retail meat market, or bakery with not more than five thousand square feet [464.52 square meters], twenty-five dollars.
11. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], forty dollars.
12. For a bar or tavern dispensing beer, liquor, or alcoholic beverages, twenty dollars.
13. For an establishment operating one or more mobile food units or pushcarts, twenty-five dollars.

If a business operates more than one type of establishment on the same premises and under the same management, a single license must be issued by the department stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed seventy-five dollars. The department shall waive all or a portion of the license fee for any restaurant, limited restaurant, ~~or~~ boardinghouse, or other food or food service establishment that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department.

SECTION 11. AMENDMENT. Section 23-09-18 of the North Dakota Century Code is amended and reenacted as follows:

23-09-18. Failure to comply with provisions of chapter - Notice - How served. Whenever the proprietor of any hotel, restaurant, lodginghouse, or boardinghouse fails to comply with ~~any of the provisions of~~ this chapter, ~~he~~ the proprietor must be given notice of the time within which ~~he~~ the proprietor must meet the requirements. The notice must be in writing and ~~must be~~ delivered personally by an inspector of the ~~state~~ department ~~of health and consolidated laboratories~~ or ~~must be~~ sent by registered ~~or certified~~ mail.

SECTION 12. AMENDMENT. Section 23-09-19 of the North Dakota Century Code is amended and reenacted as follows:

23-09-19. State's attorney to prosecute violation. The state's attorney of any county of this state, upon complaint on oath of an inspector of the ~~state~~ department ~~of health and consolidated laboratories~~, shall prosecute in the name of the state of North Dakota a proper proceeding against any person violating any provision of this chapter.

SECTION 13. AMENDMENT. Section 23-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

23-09.1-03. License fee. The annual license fee paid to the ~~state~~ department ~~of health and consolidated laboratories~~ by proprietors of bed and breakfast facilities is ~~five~~ fifteen dollars.

SECTION 14. AMENDMENT. Section 23-10-05 of the North Dakota Century Code is amended and reenacted as follows:

23-10-05. License fees. The department shall charge the following fees ~~must be charged~~ for licenses to operate mobile home parks, trailer parks, or campgrounds in this state:

1. For a mobile home park containing at least three but not more than ten lots, ~~thirty-five~~ fifty dollars.
2. For a mobile home park containing at least eleven but not more than twenty-five lots, ~~fifty~~ seventy-five dollars.
3. For a mobile home park containing at least twenty-six but not more than fifty lots, ~~sixty-five~~ one hundred dollars.
4. For a mobile home park containing more than fifty lots, ~~eighty~~ one hundred twenty dollars.
5. For a trailer park or campground containing at least three but not more than ten lots, ~~thirty~~ fifty dollars.
6. For a trailer park or campground containing at least eleven but not more than twenty-five lots, ~~forty-five~~ seventy-five dollars.
7. For a trailer park or campground containing at least twenty-six but not more than fifty lots, ~~sixty~~ one hundred dollars.

8. For a trailer park or campground containing more than fifty lots, ~~eighty~~ one hundred twenty dollars.

The department shall waive the license fee ~~must be waived~~ for any mobile home park, trailer park, or campground owned by the state, a municipality, or a nonprofit organization. The department shall waive all or a portion of the license fee for any mobile home park, trailer park, or campground ~~which~~ that is subject to local sanitation, safety, and inspection requirements accepted by the department under section 23-10-02.1.

SECTION 15. AMENDMENT. Section 61-28.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-28.2-01. Water pollution control revolving loan fund program - Purposes - Establishment - Capitalization of fund - Disposition of moneys - Administration.

1. It is the determination of the legislative assembly that the federal funds for the administration and implementation of the federal wastewater construction grants program will decline within the years to come, thereby decreasing the amount of funds that the state will have to operate and carry out the functions that it has been assigned to accomplish. In order to continue to provide funds to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, public water supply systems, and other lawful activities connected with this program, it is the purpose of this section to provide for the establishment of a revolving loan fund to be capitalized by federal grants, matching state funds when required, and by any other funds generated by the operation of the revolving loan fund.

2. There is ~~hereby~~ established ~~a fund to be known as~~ the water pollution control revolving loan fund, ~~hereafter referred to as the "revolving loan fund",~~ which must be maintained and operated by the ~~state~~ department of health and consolidated laboratories. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the North Dakota municipal bond bank if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by

municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the North Dakota municipal bond bank; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the ~~state~~ department ~~of health and consolidated laboratories~~ associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.

3. The department shall administer the revolving loan fund ~~must be administered by the state department of health and consolidated laboratories, which is authorized to~~. The department may enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the North Dakota municipal bond bank, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The ~~state~~ department ~~of health and consolidated laboratories~~ shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.

4. The ~~state~~ department ~~of health and consolidated laboratories~~ has the following powers and duties in regard to the revolving loan fund:

   a. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies for the purpose of making funds available to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, public water supply systems, and other related activities. The department may contract to receive such grants, agree to match the grant in whole or in part when required, and to comply with applicable federal laws and regulations in order to secure the grants. Money received through these grants and state matching funds must be deposited into the water pollution control revolving loan fund or used for appropriate administrative purposes.

   b. To administer the revolving loan fund as established. The ~~office is also authorized to~~ department may enter into contracts and other agreements in connection with the operation of the revolving loan fund to the extent necessary or convenient for the implementation of the revolving loan fund program.

   c. To administer and disburse funds in accordance with the federal Clean Water ~~Act~~ and Safe Drinking Water Acts, as amended.

d. To ~~promulgate~~ adopt rules as necessary to carry out the provisions of this chapter and meet the requirements of the federal Clean Water ~~Act~~ and Safe Drinking Water Acts, as amended.

SECTION 16. LEGISLATIVE COUNCIL STUDY - STUDY OF ENVIRONMENTAL HEALTH FUNCTIONS WITHIN THE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES AND OF ENVIRONMENTAL HEALTH AS AN INDEPENDENT AGENCY. The legislative council shall consider studying the feasibility and desirability of removing the environmental health functions and responsibilities of the department of health and consolidated laboratories from that department and establishing a department to handle all environmental functions and responsibilities. The study, if conducted, should address the complexity and diversity of health-related and environmental functions and responsibilities of the department of health and consolidated laboratories and whether the needs of the state would be best served by removing the environmental health functions and responsibilities from the department of health and consolidated laboratories. The legislative council, if a study is conducted, shall report its findings and recommendations, together with any legislation requested to implement the recommendations, to the fifty-fourth legislative assembly.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 28

SENATE BILL NO. 2007
(Appropriations Committee)

INDIAN AFFAIRS COMMISSION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the Indian affairs commission for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$184,754
Information services	5,350
Operating expenses	32,742
Equipment	6,540
Grants	385,000
Total general fund appropriation	$614,386

SECTION 2. ALCOHOL AND DRUG EDUCATION PROGRAM - EXPENDITURE - LIMITATIONS. The moneys appropriated in the grants line item in section 1 of this Act for the native American alcohol and drug abuse education program may not be spent for the services provided by the tribes to administer the program.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 29

SENATE BILL NO. 2008
(Appropriations Committee)

AERONAUTICS COMMISSION

AN ACT making an appropriation for defraying the expenses of the aeronautics commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 468,731
Information services	11,579
Operating expenses	728,651
Equipment	106,000
Capital improvements	300,000
Grants	1,685,816
Total all funds	$3,300,777
Less estimated income	3,043,988
Total general fund appropriation	$ 256,789

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 30

SENATE BILL NO. 2009
(Appropriations Committee)

VETERANS' AFFAIRS AND HOME

AN ACT to amend and reenact section 37-18-04 of the North Dakota Century Code, relating to duties of the commissioner of the department of veterans' affairs; and to provide an appropriation for defraying the expenses of the veterans' home and the department of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and the department of veterans' affairs for the purpose of defraying their expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	$4,100,644
Operating expenses	1,578,091
Equipment	190,523
Capital improvements	321,851
Total all funds	$6,191,109
Less estimated income	3,781,214
Total general fund appropriation	$2,409,895

Subdivision 2.

VETERANS' AFFAIRS

Salaries and wages	$ 409,337
Information services	3,960
Operating expenses	152,381
Equipment	2,050
Grants	100,000
Total funds	$ 667,728
Less estimated income	267,928
Total general fund appropriation	$ 399,800
Grand total general fund appropriated S.B. 2009	$2,809,695
Grand total special funds appropriated S.B. 2009	$4,049,142
Grand total all funds appropriated S.B. 2009	$6,858,837

SECTION 2. VETERANS' POSTWAR TRUST FUND EARNINGS. The estimated income line item in subdivision 1 of section 1 of this Act includes $122,432, or so much of the sum as may be necessary, from the veterans' postwar trust fund for the purpose of defraying the expenses of the veterans' home for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. VETERANS' POSTWAR TRUST FUND EARNINGS. The estimated income line item in subdivision 2 of section 1 of this Act includes $267,928 or so much of the sum as may be necessary, from the veterans' postwar trust fund for the purpose of defraying the expenses of the department of veterans' affairs for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. ADDITIONAL VETERANS' POSTWAR TRUST FUND EARNINGS - APPROPRIATION. Notwithstanding section 37-14-14, earnings of the veterans' postwar trust fund, in addition to the amounts appropriated in section 1 of this Act, are hereby appropriated to the administrative committee on veterans' affairs for veterans' programs administered by the veterans' home and department of veterans' affairs for the biennium beginning July 1, 1993, and ending June 30, 1995, and may be spent only upon authorization of the emergency commission.

SECTION 5. AMENDMENT. Section 37-18-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-18-04. Duties of commissioner. It is the duty of the commissioner to coordinate agencies or instrumentalities of the state set up to render service and benefits to returning veterans; to have charge of and implement programs and benefits authorized by statute; to assist or represent veterans or their widows, administrators, executors, guardians, or heirs, in processing claims; to advise and assist veterans in taking advantage of the provisions of the Servicemen's Readjustment Act of 1944 [Pub. L. 78-346; 58 Stat. 291], or any similar or related measures afforded by the federal government; to assist, supervise, advise, and direct the work of county service officers; to assist county service officers in the formation of county service to veterans' committees and to outline, assist, and direct the activities of such committees; to disseminate information and to do any and all things necessary and proper for the purpose of carrying out the intent and purposes of this chapter.

The department of veterans' affairs may accept and expend funds from any source, including federal or private sources and interest earnings from the veterans' postwar trust fund, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law, incurred pursuant to hearings covered in section 37-19.1-04 or incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs ~~or~~ with the approval of the emergency commission.

The department of veterans' affairs may receive from the United States government such records of veterans as the United States government may wish to turn over to the department of veterans' affairs and same shall keep and maintain such records as hereafter provided by this chapter.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 31

SENATE BILL NO. 2010
(Appropriations Committee)

DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of banking and financial institutions for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$2,035,585
Information services	19,847
Operating expenses	504,455
Equipment	24,900
Contingency - banking and financial institutions	15,000
Total appropriation from the financial institutions regulatory fund	$2,599,787

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 32

SENATE BILL NO. 2011
(Appropriations Committee)

STATE FAIR ASSOCIATION

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the state fair association for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Premiums	$350,000
Total all funds	$350,000
Less estimated income	56,000
Total general fund appropriation	$294,000

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 33

SENATE BILL NO. 2012
(Appropriations Committee)

COUNCIL ON THE ARTS

AN ACT to provide an appropriation for defraying the expenses of the council on the arts; and providing for an appropriation of funds from the cultural endowment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 354,775
Information services	9,128
Operating expenses	192,582
Equipment	1,360
Grants	1,608,479
Total all funds	$2,166,324
Less estimated income	1,571,107
Total general fund appropriation	$ 595,217

SECTION 2. APPROPRIATION. All income from the cultural endowment fund is hereby appropriated for the furthering of the cultural arts in the state for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. ADDITIONAL INCOME. All income of the council on the arts in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the council on the arts for the biennium beginning July 1, 1993, and ending June 30, 1995, and may be spent only upon authorization of the emergency commission.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 34

SENATE BILL NO. 2013
(Appropriations Committee)

HIGHWAY PATROL

AN ACT to provide an appropriation for defraying the expenses of the highway patrol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys not otherwise appropriated, from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$15,287,051
Information services	193,228
Operating expenses	3,430,474
Equipment	146,000
Capital improvements	32,000
Grants to state agencies	100,000
Total special funds appropriation	$19,188,753

SECTION 2. SPECIAL FUNDS. The total special funds appropriation line item in section 1 of this Act includes $18,046,139, or so much of the sum as may be necessary, from the state highway fund for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. PAYMENTS TO HIGHWAY PATROL OFFICERS. Each patrol officer of the state highway patrol shall receive from funds appropriated in the salaries and wages line item in section 1 of this Act an amount not to exceed one hundred twenty dollars per month for the biennium beginning July 1, 1993, and ending June 30, 1995. Such payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. Such amounts must be paid without the presentation of receipts or other memoranda at the time and in the same manner as salaries of members of the highway patrol are paid.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 35

SENATE BILL NO. 2014
(Appropriations Committee)

DEPARTMENT OF TRANSPORTATION

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the director of the department of transportation; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the department of transportation for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

TRANSPORTATION OPERATIONS

Salaries and wages	$ 72,420,188
Information services	3,197,140
Operating expenses	56,080,839
Equipment	6,494,408
Capital improvements	269,061,200
Grants	10,655,700
Grants to state agencies	1,966,000
Business assistance	1,500,000
Total special funds appropriation	$421,375,475

Subdivision 2.

MOTOR VEHICLE

Salaries and wages	$ 2,389,372
Information services	728,944
Operating expenses	2,620,608
Equipment	2,888
Total special funds appropriation	$ 5,741,812

Subdivision 3.

FLEET SERVICES

Salaries and wages	$ 1,509,780
Information services	202,650
Operating expenses	7,550,152
Equipment	10,135,600
Total special funds appropriation	$ 19,398,182
Grand total special funds appropriation S.B. 2014	$446,515,469

SECTION 2. TRANSFER AUTHORITY. Upon the approval of the budget section the director of the department of transportation may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. LEGISLATIVE INTENT - BUDGET SECTION REPORTING. It is the intent of the legislative assembly that the department of transportation report at each meeting of the budget section of the legislative council its progress in matching federal highway construction funds and on the status of its plan to complete a modern four-lane highway system throughout the state.

SECTION 4. INDIRECT COST ALLOCATION PAYMENTS - CONTINGENCY. The office of management and budget may charge the department of transportation for indirect costs for the biennium beginning July 1, 1993, and ending June 30, 1995, pursuant to section 54-44.1-15 only if the fifty-third legislative assembly approves a motor vehicle fuel tax increase or a contingent motor vehicle fuel tax increase.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 36

SENATE BILL NO. 2015
(Appropriations Committee)

COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated from special funds derived from the state lands maintenance fund and the lands and minerals trust fund in the state treasury, not otherwise appropriated, and other income to the commissioner of university and school lands for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$1,478,451
Information services	52,657
Operating expenses	579,520
Equipment	59,750
Grants	5,165,454
Mineral leasing refunds	266,000
Contingency fund	50,000
Total special funds	$7,651,832

SECTION 2. SPECIAL FUNDS. The amount of $5,000,000, or so much of the amount as may be necessary, included in the salaries and wages, information services, operating expenses, equipment, and grants line items in section 1 of this Act may be spent from the oil and gas impact grant fund by the commissioner of university and school lands for the purpose of providing oil and gas development impact grants and for related administrative expenses for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. SPECIAL FUNDS. The amount of $266,000, or so much of the amount as may be necessary, included in the mineral leasing refunds line item in section 1 of this Act may be spent from the lands and minerals trust fund by the commissioner of university and school lands for the purpose of refunding bonus and rental moneys received on oil and gas leases covering the Little Missouri riverbed for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. GRANTS. Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of this Act nor to the appropriation for coal impact grants in chapter 733 of the 1989 Session Laws of North Dakota.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 37

SENATE BILL NO. 2016
(Appropriations Committee)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT making an appropriation for defraying the expenses of the children's services coordinating committee; and to provide an appropriation to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the children's services coordinating committee for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 124,027
Information services	2,970
Operating expenses	22,350
Grants	987,000
Total all funds	$1,136,347
Less estimated income	437,000
Total general fund appropriation	$ 699,347

SECTION 2. PLANNING BOARDS. The children's services coordinating committee shall assist each of the eight regions of the state to establish a local planning board to coordinate children's services in that region and monitor the coordination of the services being provided in each region for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. LEGISLATIVE INTENT - STATE CHILDREN'S SERVICES PLAN. It is the intent of the legislative assembly that during the biennium beginning July 1, 1993, and ending June 30, 1995, each of the eight regions of the state establish a local planning board consisting of representatives from local children's services agencies to coordinate children's services in that region. Each local planning board, based on the concept of the families first pilot projects in the Grand Forks and Devils Lake regions and in cooperation with the department of human services, should consider the following in developing comprehensive, coordinated children's services in that region:

1. Merging families first programs and other similar programs with family preservation services of other regional human service agencies.
2. Selecting and prioritizing available children's services that are most beneficial to that region. Services and programs to consider include family education, intensive in-home crisis intervention, respite care, parent aide, prime time day care, wraparound services, case management,

high risk youth/drug free school program, neighbor's program, family support, juvenile diversion, and others.

3. Raising sufficient local funds to match available grants for the purpose of providing the children's services identified by the local planning board.

SECTION 4. GRANTS. Of the $987,000 appropriated in the grants line item in section 1 of this Act, the children's services coordinating committee shall provide no less than $250,000 to regions 3 and 4 (Devils Lake and Grand Forks), and no less than $75,000 to each of the other six regions.

SECTION 5. ADDITIONAL INCOME. All income of the children's services coordinating committee in excess of the estimated income line item appropriated in section 1 of this Act is hereby appropriated to the children's services coordinating committee for the biennium beginning July 1, 1993, and ending June 30, 1995, and may be spent only upon authorization of the emergency commission.

SECTION 6. APPROPRIATION - TRANSFER. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $80,000, or so much of the sum as may be necessary, and $40,000 from special funds to the legislative council for the purpose of hiring a consultant to assist with a legislative council interim study of children and youth services in the state for the biennium beginning July 1, 1993, and ending June 30, 1995. Notwithstanding the provisions of chapter 54-16, subject to budget section approval, the legislative council chairman may request the director of the office of management and budget to transfer appropriation authority from the appropriation made pursuant to this section to the children's services coordinating committee.

SECTION 7. CHILDREN'S SERVICES COORDINATING COMMITTEE - STATUS REPORTS TO LEGISLATIVE COUNCIL. The children's services coordinating committee shall report to the legislative council or an interim committee designated by the legislative council on the status of the implementation of the state children's services plan included in section 3 of this Act.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 38

SENATE BILL NO. 2017
(Appropriations Committee)

INDUSTRIAL COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to provide for a limit on state building authority lease payments; to repeal sections 54-17.2-21 and 54-17.2-22 of the North Dakota Century Code, relating to the capital construction fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	$ 4,725,310
Information services	147,694
Operating expenses	1,409,149
Equipment	46,729
Administrative contingency	10,000
Lease payments	12,656,195
Lignite research grants	10,163,800
Total all funds	$ 29,158,877
Less estimated income	12,256,475
Total general fund appropriation	$ 16,902,402

Subdivision 2.

BANK OF NORTH DAKOTA

Salaries and wages	$ 11,566,746
Information services	4,136,567
Operating expenses	4,733,730
Equipment	550,000
Capital improvements	455,000
Contingency	800,000
Total appropriation from Bank of North Dakota fund	$ 22,242,043

Subdivision 3.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	$ 11,264,588
Operating expenses	6,879,949
Contingency	250,000

Agriculture promotion	50,000
Total appropriation from mill and elevator fund	$ 18,444,537

Subdivision 4.

HOUSING FINANCE AGENCY

Salaries and wages	$ 2,713,113
Information services	88,715
Operating expenses	874,081
Equipment	100,000
Grants	33,166,360
Contingency	100,000
Total appropriation from housing finance agency fund	$ 37,042,269
Grand total general fund appropriation S.B. 2017	$ 16,902,402
Grand total special funds appropriation S.B. 2017	$ 89,985,324
Grand total all funds appropriation S.B. 2017	$106,887,726

SECTION 2. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 4 of section 1 of this Act, there is hereby appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. APPROPRIATION. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is hereby appropriated, with the approval of the emergency commission, funds which may become available to the commission from bonds authorized by law to be issued by the industrial commission under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. TRANSFER. The sum of $57,403, or so much of the sum as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the accumulated and undivided profits of the North Dakota mill and elevator association. Such moneys shall be transferred during the the biennium beginning July 1, 1993, and ending June 30, 1995, upon order of the industrial commission.

SECTION 5. TRANSFER. The sum of $73,360, or so much of the sum as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium beginning July 1, 1993, and ending June 30, 1995, upon order of the industrial commission.

SECTION 6. TRANSFER. The sum of $47,832, or so much of the sum as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the housing finance agency fund. Such moneys shall be transferred during the biennium beginning July 1, 1993, and ending June 30, 1995, upon order of the industrial commission.

SECTION 7. TRANSFER. The sum of $15,940, or so much of the sum as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the revenues of the municipal bond bank. Such moneys shall be transferred during the biennium beginning July 1, 1993, and ending June 30, 1995, upon order of the industrial commission.

SECTION 8. INCOME AUTHORIZATION - STUDENT LOAN TRUST. There is hereby authorized the receipt of fees by the industrial commission in the sum of $51,232, or so much of the sum as is owed, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, from the student loan trust for administrative services rendered by the industrial commission to the extent permitted by sections 54-17-24 and 54-17-25. Such fees shall be received during the biennium beginning July 1, 1993, and ending June 30, 1995, upon order of the industrial commission.

SECTION 9. TRANSFER. There is hereby authorized the transfer to the general fund in the state treaury, the sum of $4,000,000 from the accumulated and undivided profits of the North Dakota mill and elevator association. Such moneys shall be transferred during the biennium beginning July 1, 1993, and ending June 30, 1995, upon order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1994.

SECTION 10. LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of $400,000, or so much of the amount as is necessary, included in the grants and special funds appropriation line items in subdivision 1 of section 1 of this Act, is from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and jobs or that will lead to increased development of lignite and its products and create new jobs and economic growth for the general welfare of North Dakota. Moneys not needed for the purposes stated herein shall be available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 11. LEGISLATIVE INTENT - LEASE PAYMENTS. The amount of $12,656,195 included in subdivision 1 of section 1 of this Act in the lease payments line item shall be paid from the following funding sources during the biennium beginning July 1, 1993, and ending June 30, 1995:

Higher education institutions	$ 294,118
State general fund	11,781,626
Federal portion for southeast human service center	316,290
Veterans' home improvement fund	264,161
Total	$12,656,195

SECTION 12. CONTINGENCY APPROPRIATION. The $800,000 contingency line, or so much of the sum as may be necessary, included in subdivision 2 of section 1 of this Act, is to be used for profit enhancement programs not anticipated during the fifty-third legislative assembly for the biennium beginning July 1, 1993, and ending June 30, 1995. The amounts can be made available to the Bank of North Dakota only after receiving emergency commission approval.

SECTION 13. SOLID WASTE MANAGEMENT FUND. The estimated income line item included in section 1 of this Act includes $141,126 which the geological survey may spend from the solid waste management fund for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 14. BANK OF NORTH DAKOTA PROFITS - TRANSFERS. The industrial commission is authorized during the biennium ending June 30, 1995, to transfer to the state general fund $20,000,000 of accumulated and undivided profits, plus all earnings occurring during the biennium not to exceed $28,000,000. No transfers may be made which would reduce the Bank's capital structure below $100,000,000.

SECTION 15. CLEAN COAL DEVELOPMENT PROJECTS. The lignite research grants line in subdivision 1 of section 1 of this Act, includes $500,000 for the partial funding of the state's share of clean coal demonstration projects if approved by the industrial commission and the United States department of energy, for the biennium beginning July 1, 1993, and ending June 30, 1995. The $500,000 is to be provided from the coal development trust fund if a constitutional amendment authorizing the use of the coal development trust fund moneys for this purpose is approved by the voters or from the lignite research fund if a constitutional amendment authorizing the use of the moneys for this purpose is not approved.

SECTION 16. COAL PROJECTS REVIEW. If clean coal demonstration projects are approved by the United States department of energy, potential impacts from construction shall be reviewed by the energy impact development officer and funding recommendations, if appropriate, be made to the fifty-fourth legislative assembly as a part of the state land department budget.

SECTION 17. TRANSFER. The state treasurer shall transfer the unobligated balance in the capital construction fund to the state general fund on July 1, 1993. Upon payment of all obligations, the state treasurer shall transfer any balance to the state general fund. After June 30, 1993, the state treasurer shall deposit in the state general fund any moneys that would otherwise be deposited in the capital construction fund.

SECTION 18. State building authority lease payments - Limitation. The amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to twelve and one-half percent of an amount, determined by multiplying the quotient of one percent divided by the general sales tax rate that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3.

SECTION 19. REPEAL. Sections 54-17.2-21 and 54-17.2-22 of the North Dakota Century Code are repealed.

SECTION 20. EFFECTIVE DATE. Sections 17 and 19 of this Act are effective for all sales, use, and motor vehicle excise tax revenues received by the state treasurer for deposit after June 30, 1993.

SECTION 21. LEGISLATIVE INTENT. It is the intent of the fifty-third legislative assembly that if 1993 House Bill No. 1240 is passed by the legislative assembly, the industrial commission shall make appropriate staffing adjustments in the housing finance agency during the 1993-95 biennium based on workloads and consistent with personnel considerations and anticipated income. If 1993 House Bill No. 1240 passes, the industrial commission is to report to the first 1993-94 interim budget section meeting on the changes in the housing finance agency.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 39

SENATE BILL NO. 2018
(Appropriations Committee)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

AN ACT making an appropriation for defraying the expenses of the department of corrections and rehabilitation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the department of corrections and rehabilitation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

CENTRAL OFFICE

Salaries and wages	$ 494,320
Information services	6,993
Operating expenses	453,100
Equipment	7,100
Total all funds	$ 961,513
Less estimated income	400,308
Total general fund appropriation	$ 561,205

Subdivision 2.

COMMUNITY SERVICES

Salaries and wages	$ 1,869,745
Information services	49,250
Operating expenses	1,511,884
Equipment	10,650
Grants	600,000
Total all funds	$ 4,041,529
Less estimated income	1,454,248
Total general fund appropriation	$ 2,587,281

Subdivision 3.

INDUSTRIAL SCHOOL

Salaries and wages	$ 5,655,829
Information services	68,025
Operating expenses	1,459,516
Equipment	110,785
Capital improvements	190,700
Institutional medical fees	100,000
Total all funds	$ 7,584,855
Less estimated income	2,040,748

Total general fund appropriation	$ 5,544,107

Subdivision 4.

STATE PENITENTIARY

Salaries and wages	$12,917,071
Information services	97,468
Operating expenses	5,791,553
Equipment	243,407
Capital improvements	669,121
Institutional medical fees	350,000
Total all funds	$20,068,620
Less estimated income	3,611,788
Total general fund appropriation	$16,456,832

Subdivision 5.

ROUGH RIDER INDUSTRIES

Salaries and wages	$ 1,916,235
Information services	29,301
Operating expenses	4,451,909
Equipment	300,000
Total special funds	$ 6,697,445

Subdivision 6.

PAROLE AND PROBATION

Salaries and wages	$ 3,330,694
Information services	54,058
Operating expenses	561,890
Equipment	57,175
Grants	1,444,703
Total all funds	$ 5,448,520
Less estimated income	1,850,386
Total general fund appropriation	$ 3,598,134
Grand total general fund appropriation S.B. 2018	$28,747,559
Grand total special funds appropriation S.B. 2018	$16,054,923
Grand total all funds appropriation S.B. 2018	$44,802,482

SECTION 2. TRANSFER AUTHORITY. Upon approval of the budget section, the director of the department of corrections and rehabilitation may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 40

SENATE BILL NO. 2019
(Appropriations Committee)

JOB SERVICE NORTH DAKOTA

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in special funds in the state treasury, not otherwise appropriated, derived from federal funds and other income, to job service North Dakota for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$31,032,866
Operating expenses	8,078,952
Equipment	500,000
Capital improvements	606,601
Grants	10,164,750
Total special funds appropriation	$50,383,169

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 3. SPECIAL FUNDS. The sum of $185,000 of the special funds appropriation provided in section 1 of this Act is to be spent from moneys from the future fund to job service North Dakota for the purpose of defraying expenses of the work force 2000 program for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 4. APPROPRIATION. In addition to the amount appropriated to job service North Dakota in section 1 of this Act, for the North Dakota work force 2000 program, there is hereby appropriated any additional income for the program from other funds which may become available to the agency for the biennium beginning July 1, 1993, and ending June 30, 1995.

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

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 41

SENATE BILL NO. 2020
(Appropriations Committee)

OFFICE OF ADMINISTRATIVE HEARINGS

AN ACT making an appropriation for defraying the expenses of the office of administrative hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from billing agencies for services, to the office of administrative hearings for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$508,840
Information services	18,580
Operating expenses	73,866
Equipment	9,495
Total all funds	$610,781
Less estimated income	380,699
Total general fund appropriation	$230,082

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 42

SENATE BILL NO. 2021
(Appropriations Committee)

DEPARTMENT OF ECONOMIC DEVELOPMENT AND FINANCE

AN ACT making an appropriation for defraying the expenses of the various divisions of the department of economic development and finance; providing for transfers of funds; to create and enact a new section to chapter 6-09.10, a new subsection to section 11-11.1-03, and a new subsection to section 40-57.4-03 of the North Dakota Century Code, relating to the credit review board, county job development authorities, and city job development authorities; to amend and reenact section 4-14.1-03, 6-09.10-02, subsections 2, 3, and 6 of section 10-30.3-01, sections 10-30.3-03, 10-30.3-10, 10-30.3-11, subsection 2 of section 10-30.4-01, sections 10-30.4-02, 10-30.4-03, 15-12-25, 54-34.3-03, 54-34.3-05, 54-34.3-06, 54-34.3-07, and 54-34.3-08 of the North Dakota Century Code, relating to the agricultural products utilization commission, credit review board, North Dakota future fund, incorporated, technology transfer, incorporated, and the department of economic development and finance; to provide for a study of the income level requirements by the department of economic development and finance; to provide for a legislative council study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the various divisions of the department of economic development and finance for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 2,303,419
Information services	93,728
Operating expenses	1,447,932
Equipment	28,828
Grants	1,096,000
Grants to state agencies	396,723
Future fund	5,005,000
Technology transfer, incorporated	2,125,000
Partnership in assisting community expansion fund	2,700,000
Agriculture partnership in assisting community expansion fund	400,000
Agricultural products utilization commission grant	1,175,000
Beginning farmer revolving loan fund	1,000,000
Total all funds	$17,771,630
Less estimated income	18,000
Total general fund appropriation	$17,753,630

SECTION 2. TRANSFERS - ECONOMIC DEVELOPMENT FUNDS. The following amounts appropriated in section 1 of this Act must be transferred to the following funds or

programs for expenditure purposes for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Future fund	$ 5,005,000
Technology transfer, incorporated	2,125,000
Partnership in assisting community expansion fund	2,700,000
Agriculture partnership in assisting community expansion fund	400,000
Agricultural products utilization commission	1,175,000
Beginning farmer revolving loan fund	1,000,000
Total	$12,405,000

SECTION 3. AMENDMENT. Section 4-14.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agricultural fuel tax fund must be administered by the agricultural products utilization commission ~~which is hereby established~~. The commission consists of nine members, ~~six~~ five of whom must be appointed by the governor for terms of two years each, arranged so that ~~at least three~~ two terms expire ~~every year~~ in odd-numbered years and three terms expire in even-numbered years. ~~Four~~ Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The commissioner of agriculture shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July ~~of odd-numbered years~~. The director of the department of economic development and finance, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

SECTION 4. AMENDMENT. Section 6-09.10-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02. Credit review board. The board consists of six members. The governor ~~shall appoint one member of the credit review board, the commissioner of agriculture shall appoint one member of the credit review board, and the attorney general shall appoint one member of the credit review board. One member of the board must have experience serving as a director or officer of a financial institution. Two members of the board must have experience in the operation of a farm~~, the attorney general, and the commissioner of agriculture shall each appoint two members to the board. The governor and attorney general shall each appoint one member with experience as a director or officer of a financial institution and one member actively engaged in farming in the state. The commissioner of agriculture shall appoint two members who are actively engaged in farming in the state. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board. The credit review board members shall serve terms of two years.

SECTION 5. A new section to chapter 6-09.10 of the North Dakota Century Code is created and enacted as follows:

Additional duties of board. In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.

2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.

3. Recommend policies and procedures regarding the adult farm management program to the state board of vocational education.

4. Develop and administer a grant program to provide farmers with access to the farm diversification analytic system. The program shall coordinate a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university extension service.

[1] **SECTION 6. AMENDMENT.** Subsections 2, 3, and 6 of section 10-30.3-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Corporation" means the North Dakota ~~economic development finance corporation~~ future fund, incorporated established under this chapter.

3. "North Dakota American Indian" means an enrolled member of a federally recognized North Dakota tribe ~~with at least one-fourth degree blood quantum~~.

6. "Primary sector business" means an individual, corporation, partnership, or association which through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth. The term includes tourism, but does not include production agriculture.

SECTION 7. AMENDMENT. Section 10-30.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-03. Organization. The corporation must be managed by a board of directors. The board of directors shall adopt and amend articles of incorporation and bylaws consistent with the purposes detailed in section 10-30.3-02. The board of directors consists of ~~seven~~ eight members who shall serve three-year terms. The terms must be staggered so that no more than three positions require reappointment in any one year. ~~Members must be appointed by the~~ The governor ~~who~~ shall appoint the members and shall only consider representatives who serve in executive capacities from the following areas in making the selections: private sector manufacturing, finance, exported services, including tourism, and industrial technology and research. There must be at least one member who is enrolled in a federally recognized North Dakota tribe ~~with at least one-fourth degree American Indian blood quantum~~ who need not serve in an executive capacity, the director of

[1] NOTE: Section 10-30.3-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

economic development and finance, and one member from a rural area, on the board of directors. Members may be reappointed for additional terms.

SECTION 8. AMENDMENT. Section 10-30.3-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-10. ~~Primary sector development fund~~ North Dakota future fund - Continuing appropriation. ~~A primary sector development fund~~ The North Dakota future fund is established from moneys appropriated from the general fund. This is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11.

SECTION 9. AMENDMENT. Section 10-30.3-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-11. ~~Primary sector development~~ North Dakota future fund uses - Distribution - Limitations.

1. The fund moneys may be used for the purposes of this chapter as provided in section 10-30.3-02. Moneys may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.

2. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation. The rules must include a requirement that ~~every~~:

   a. Eighty-five percent of the full-time ~~employee~~ employees of a rural North Dakota business or North Dakota American Indian business receiving moneys or other assistance from the ~~primary sector development~~ North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the life of the loan, equity position, or other financial relationship ~~and~~;

   b. Every full-time employee of an urban North Dakota business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the first year following the receipt of moneys from the fund; and

   c. After the first year following the receipt of moneys from the fund, ninety percent of the full-time employees of an urban North Dakota business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the

remaining period of the loan, equity position, or other financial relationship.

For purposes of this subsection, "full-time employee" means a person employed to work thirty-two hours or more per week. The rules must establish procedures for determining compliance with ~~this requirement~~ subdivisions a, b, and c and sanctions for failure to comply ~~with it~~. The department may renegotiate, at any time, any contract entered into with a business under this section to reflect changes by the legislative assembly in the percentage of employees subject to the income requirement of this section. The rules must include requirements for and methods of distribution of the funds generally targeted for a distribution of forty percent businesses in rural areas, twenty percent businesses in urban areas, twenty percent North Dakota American Indian businesses, and twenty percent to be undesignated. Any unused funds in any category may be transferred to the undesignated portion during the second year of the biennium under rules adopted by the director of the department of economic development and finance. Moneys in the undesignated portion of the funds may be utilized in any of the three targeted areas.

[2] **SECTION 10. AMENDMENT.** Subsection 2 of section 10-30.4-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Corporation" means ~~the science and~~ technology ~~corporation~~ transfer, incorporated established under this chapter.

SECTION 11. AMENDMENT. Section 10-30.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.4-02. Purpose. It is the purpose of this chapter to create a ~~science and technology~~ corporation that will provide a program and budgetary interface between the department of economic development and finance and the North Dakota university system. The primary objective of the interface is to focus the intellectual and technical resources of the university system on the discovery, development, and application of scientific and technological principles and concepts on North Dakota's primary sector business.

SECTION 12. AMENDMENT. Section 10-30.4-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.4-03. Organization.

1. A board of directors shall manage the corporation. The board of directors shall adopt articles of incorporation and bylaws consistent with the requirements of section 10-30.4-02. The board of directors consists of:

   a. ~~The~~ Until July 1, 1995, the president of the North Dakota state university of agriculture and applied science, or the president's designee and the president of the state university of North Dakota, or the president's designee.

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[2] NOTE: Section 10-30.4-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

b. ~~The president of the state university of North Dakota, or the president's designee.~~ After June 30, 1995, two members appointed by the commissioner of higher education, one of which may be the commissioner.

c. ~~A representative from the board of directors of the North Dakota economic development finance corporation appointed under section 10-30.3-03.~~ The director of the department of economic development and finance.

d. A representative of the North Dakota industrial development association, as appointed by that association.

e. Three members appointed by the governor, representing the primary sector industries of agriculture, energy, manufacturing, and export services.

2. The members appointed under subdivisions ~~c through e~~ b, d, and e of subsection 1 must be appointed in a manner that results in subsequent terms of three years staggered so that the term of at least one member expires each year. Members may be reappointed for additional terms.

[3] **SECTION 13.** A new subsection to section 11-11.1-03 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.

SECTION 14. AMENDMENT. Section 15-12-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[4] **15-12-25. Grants and contributions - Continuing appropriation.** The economic feasibility institute may contract for, accept, and receive grants, gifts, and contributions of money, property, services, or other things of value from individuals, the federal government, private and public corporations, political subdivisions of the state, and other sources. All revenue received from gifts, grants, and contributions is hereby appropriated for use by the economic feasibility institute in carrying out the provisions of sections 15-12-22 through 15-12-26. Any state funding for the institute may be provided through legislative appropriation to ~~the science and~~ technology ~~corporation~~ transfer, incorporated for that purpose.

SECTION 15. A new subsection to section 40-57.4-03 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To use existing, uncommitted funds held by the authority to guarantee loans or make other financial commitments to enhance economic development.

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[3] NOTE: Section 11-11.1-03 was also amended by section 3 of House Bill No. 1483, chapter 98 and by section 1 of Senate Bill No. 2537, chapter 99.

[4] NOTE: Section 15-12-25 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

SECTION 16. AMENDMENT. Section 54-34.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-03. Department structure. The department consists of:

1. A division of finance;

2. ~~A division of marketing and technical assistance;~~

~~3.~~ A division of science and technology; and

~~4.~~ 3. Other divisions that the director ~~upon the approval of the budget section of the legislative council determines~~ organizes and establishes as necessary to carry out most efficiently and effectively the mission and duties of the department.

SECTION 17. AMENDMENT. Section 54-34.3-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-05. Division of finance - Deputy director. The director shall appoint a deputy director who shall administer the division of finance. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The purpose of the division of finance is to identify and coordinate sources of capital and financial assistance, including lending programs of the Bank of North Dakota, and administer programs of financial assistance placed under the administration of the division, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the department. The division of finance shall:

1. ~~Implement the review and decisionmaking functions of the economic development component of the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383, 88 Stat. 633, 42 U.S.C. 5301 et seq.].~~

~~2.~~ Administer other programs of financial assistance assigned to it by law or otherwise.

~~3.~~ 2. Perform such other duties as assigned to it by the director.

SECTION 18. AMENDMENT. Section 54-34.3-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-06. ~~Division of marketing and technical assistance - Deputy director - Duties.~~ ~~The director shall appoint a deputy director who shall administer the division of marketing and technical assistance. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The duties of the division of marketing and technical assistance are, as consistent with the mission of the department, to:~~ Divisions. The director shall organize and establish other divisions as necessary to carry out most efficiently and effectively the mission and duties of the department, except that the department must contain:

1. ~~Coordinate, develop, and make available technical services on the state, regional, and local levels in order to aid business and industry in their startup or expansion in the state.~~

~~2. Foster and promote international trade.~~

~~3. Collaborate in partnership with local communities in the state to provide technical assistance and to coordinate state, regional, and local programs that stimulate and support economic development activity.~~

~~4. Promote and encourage the growth and diversification of the economy, innovation, and retention of business and industry in the state.~~

~~5. Attract new business and industry from outside the state, in a manner that creates quality jobs, attracts new capital investment, and expands and diversifies the state's economic tax base.~~

~~6. Maintain and keep current available information regarding the industrial opportunities and possibilities of the state, including raw materials and byproducts, power and water resources, transportation facilities, available markets and the marketing limitations of the state, labor supply, banking and financing facilities, available industrial sites, and the advantages the state and its particular regions have as industrial locations. This information must be used for the encouragement of new industries in the state and the expansion of existing industries within the state, as well as made available to local development corporations, cities, and the various political subdivisions of the state in their efforts to encourage the location of business and industry within the state.~~

~~7. Establish an~~ An office of North Dakota American Indian business development to assist North Dakota tribal and individual economic development representatives and North Dakota American Indian entrepreneurs with access to state and federal programs designed to assist them.

~~8. Provide appropriate resources to ensure increased business opportunities for women.~~

~~9. Provide administrative services to the department.~~

~~10. Utilize existing marketing entities from private and other sources such as the microbusiness marketing alliance.~~

~~11. Perform such other duties as assigned to the division by the director.~~

2. An office of North Dakota women's business development to develop and administer the North Dakota women's business program, to establish and fund the women's business leadership council, certify women-owned businesses for federal or state contracting and to recruit, train, and assist women entrepreneurs to develop and diversify their businesses. The office must have an administrator and staff sufficient to implement its programs.

SECTION 19. AMENDMENT. Section 54-34.3-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-07. Division of science and technology - Deputy director - Duties. A deputy director, hired, or contracted for, by the board of directors of ~~the science and~~ technology ~~corporation~~ transfer, incorporated and reporting administratively to the director, shall administer the division of science and technology. The deputy

director shall serve at the will of the board of directors and receive a salary set by the board within the limits of legislative appropriations. The purpose of the division of science and technology is to support the development and implementation of policies and programs that respond to the scientific and technological needs and opportunities of business and industry in the state through basic and applied research and technology transfer, product commercialization, agricultural and industrial extension, and private sector research and development. The division shall perform such duties as assigned to it by the director.

SECTION 20. AMENDMENT. Section 54-34.3-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-08. Patents. The department of economic development and finance, ~~the science and~~ technology ~~corporation~~ transfer, incorporated, the North Dakota ~~economic development finance corporation~~ future fund, incorporated, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

SECTION 21. INCOME LEVEL STUDY. The department of economic development and finance shall monitor the impact of the income level requirement in section 10-30.3-11 and benefit packages on businesses that receive funds from the primary sector development fund for the 1993-95 biennium. The department shall study those results and report any recommendations for change to the income level requirements considered necessary to the legislative council or an interim committee designated by the legislative council.

SECTION 22. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT. The legislative council shall consider forming a jobs development commission composed of legislators, officials from the executive branch of government, officials from higher education, and representatives of private industry to study methods and coordinate efforts to initiate and sustain new economic development in this state. The legislative council, if a study is conducted, shall report its findings and recommendations, together with any legislation requested to implement the recommendations, to the fifty-fourth legislative assembly.

SECTION 23. EMERGENCY. The future fund and technology transfer, incorporated line items in section 1 of this Act are declared to be an emergency measure.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 43

SENATE BILL NO. 2022
(Appropriations Committee)

BOARD OF VOCATIONAL EDUCATION

AN ACT making an appropriation for defraying the expenses of the state board of vocational education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state board of vocational education for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Salaries and wages	$ 2,234,283
Information services	61,692
Operating expenses	400,123
Equipment	38,900
Grants	15,055,114
Grants to state agencies	3,315,002
COVE	322,875
BSC vocational grant	1,572,485
UND-LR vocational grant	705,643
UND-W vocational grant	708,301
Adult farm management	250,000
Postsecondary education vocational grants	400,000
College technical - administrative grant	150,000
Total all funds	$25,214,418
Less estimated income	11,003,952
Total general fund appropriation	$14,210,466

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 44

SENATE BILL NO. 2053
(Appropriations Committee)
(At the request of the Office of Management and Budget)

FUTURE FUND AND TECHNOLOGY TRANSFER

AN ACT to provide an appropriation to the department of economic development and finance; to provide for a transfer of the earnings of the Bank of North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the department of economic development and finance for the purpose of defraying the expenses of the following programs, for the period beginning January 1, 1993, and ending June 30, 1993, as follows:

Future Fund	$1,625,000
Technology Transfer, Incorporated	375,000
Total general fund appropriation	$2,000,000

SECTION 2. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of $4,000,000 from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred as required to meet the programs' expenditures but prior to June 30, 1993.

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

Approved March 25, 1993
Filed March 26, 1993

GENERAL PROVISIONS

CHAPTER 45

HOUSE BILL NO. 1045
(Legislative Council)
(Interim Judiciary Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 11-11-57, 14-02.4-14, subsection 1 of section 14-17-12, sections 15-22-01, 15-40.2-09, 15-62.1-01, subsection 5 of section 23-06.2-05, subdivision e of subsection 1 of section 23-07.5-05, section 24-02-01.3, subsection 32 of section 26.1-05-19, subdivision b of subsection 2 of section 26.1-10-03.1, sections 26.1-18-29, 26.1-25-02, subsection 1 of section 26.1-25-10.5, section 27-11-20, subsection 7 of section 39-06.1-06, subsection 3 of section 44-04-19.1, sections 51-18-04.1, 54-03-25, subsection 1 of section 57-40.2-02.1, section 61-24.5-10, subsection 20 of section 65-01-02, subsection 7 of section 65-05-10, and subsection 2 of section 65-05.1-04 of the North Dakota Century Code, relating to improper, inaccurate, redundant, missing, or obsolete references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-57 of the North Dakota Century Code is amended and reenacted as follows:

11-11-57. Counties may cooperate in predatory animal and injurious rodent control. Boards of county commissioners ~~are hereby authorized to~~ may perform, within their respective counties, predatory animal, destructive bird, and injurious rodent control as defined in section 4-01-17.1, and ~~to~~ may enter into cooperative agreements with the commissioner of agriculture and the United States department of ~~the interior, bureau of sport fisheries and wildlife~~ agriculture, for this purpose.

SECTION 2. AMENDMENT. Section 14-02.4-14 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-14. Public accommodations - Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public ~~assistances~~ accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available, because of the person's race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance.

SECTION 3. AMENDMENT. Subsection 1 of section 14-17-12 of the North Dakota Century Code is amended and reenacted as follows:

1. On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child

relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement must be made to the parties, which may include any of the following:

a. That the action be dismissed with or without prejudice.

b. That the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child~~, in the light of the factors enumerated in subsection 5 of section 14-17-14,~~ discounted by the improbability, as it appears to ~~him~~ the judge or referee, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

c. That the alleged father voluntarily acknowledge his paternity of the child.

SECTION 4. AMENDMENT. Section 15-22-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-22-01. County superintendent of schools. The presidents of the school boards of school districts whose headquarters are located within each organized county shall select a candidate to serve as county superintendent of schools. The presidents shall submit the name of the candidate selected to the board of county commissioners for approval. If the board of county commissioners does not approve the candidate, the presidents shall submit the name of another candidate. This process must continue until the board of county commissioners approves a candidate. The candidate approved by the board of county commissioners shall serve as the county superintendent of schools. The candidate selected shall serve as county superintendent of schools until the candidate resigns or is discharged by the board of county commissioners at the request of a majority of the presidents of the school boards within the county in the manner provided for discharge of ~~superintendents~~ teachers pursuant to section ~~15-47-38.1~~ 15-47-38. The presidents of the school boards in the county shall perform the same functions as the school board in ~~section 15-47-38.1~~ sections 15-47-27 and 15-47-38 with regard to evaluations, renewals, or discharges of county superintendents of schools.

SECTION 5. AMENDMENT. Section 15-40.2-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance when district annexed or reorganized.**

1. Students may attend a school in a bordering state under the following circumstances:

   ~~1.~~ a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which ~~such~~ the student resides may contract with the bordering state for the education of ~~such~~ the student.

   ~~2.~~ b. A student who resides within a school district ~~which~~ that is annexed to or reorganized with another district or districts, and who attended a school district in a bordering state during the immediately preceding school year, ~~shall~~ must be permitted to attend or continue attending school in the district in the bordering state.

2. If the school board of the district in which the student resides denies a request for attendance in another state, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision ~~shall be~~ is final. ~~In the event that~~ If the district does not comply with a decision requiring that tuition charges be paid, state payments ~~shall~~ must be withheld as provided in section 15-40.2-05.

3. Payments must be made to the school district or institution in the bordering state for state foundation aid for students attending out-of-state schools under a reciprocal agreement based on actual enrollment for that year. Payments will be determined as provided in section 15-40.1-07 or 15-40.1-08 based on the weighting factor of the student's district ~~or~~ of residence. The remainder of the pupil's tuition as determined under section 15-40.2-10 ~~shall~~ must be paid by the district of the pupil's residence. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.

4. This section ~~shall~~ does not ~~be construed to~~ require the district of residence to provide pupil transportation, or payments in lieu thereof, for pupils for whom the payment of tuition has been approved.

SECTION 6. AMENDMENT. Section 15-62.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-01. Guarantee student loan programs - Administration - Advisory board. The Bank of North Dakota, hereinafter called the "agency", is the state agency designated to administer state guarantee loan programs, as provided in this chapter. The advisory board of directors to the Bank of North Dakota appointed

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[1] NOTE: Section 15-40.2-09 was also amended by section 3 of House Bill No. 1158, chapter 194, and by section 1 of Senate Bill No. 2490, chapter 199.

pursuant to chapter ~~6-09.1~~ 6-09 shall act in an advisory capacity concerning the programs. The agency, upon recommendation of the advisory board and subject to approval of the industrial commission, shall expend moneys received and from the interest earned on the principal balance in the reserve funds established pursuant to this chapter as may be necessary to implement and administer the programs. The term "student" includes a parent borrower under this chapter and the term "coinsurance" includes reinsurance.

SECTION 7. AMENDMENT. Subsection 5 of section 23-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

5. If a document of gift or evidence of refusal to make a gift is located by the search required by subdivision a of subsection ~~3~~ 4, a hospital must be notified of the contents and the document must be sent to the hospital with the individual to whom it applies.

SECTION 8. AMENDMENT. Subdivision e of subsection 1 of section 23-07.5-05 of the North Dakota Century Code is amended and reenacted as follows:

e. A health care provider who procures, processes, distributes, or uses a human body part donated for a purpose specified under chapter ~~23-06.1~~ 23-06.2 for the purpose of assuring medical acceptability of the gift for the purpose intended.

SECTION 9. AMENDMENT. Section 24-02-01.3 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.3. Director of the department of transportation - Appointment - Compensation. The department of transportation must be managed and directed by the director of the department of transportation, who must be appointed by, and serve at the pleasure of, the governor. The director shall take the oath of office required of civil officers by section 44-01-05 ~~and must be bonded as required of civil officers by section 44-01-06~~. The director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 10. AMENDMENT. Subsection 32 of section 26.1-05-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32. Obligations secured by a pledge of personal property, as follows:

a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.

b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under ~~subsections~~ subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

SECTION 11. AMENDMENT. Subdivision b of subsection 2 of section 26.1-10-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. This section does not apply to the following:

(1) An acquisition subject to approval or disapproval by the commissioner pursuant to section 26.1-10-03.

(2) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under subsection 2 of section 26.1-10-01, it is not solely for investment purposes unless the commissioner of the insurance company's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state.

(3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subdivision ~~i~~ a of subsection 3 thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other paragraph of this subdivision.

(4) The acquisition of already affiliated persons.

(5) An acquisition if, as an immediate result of the acquisition:

(a) In no market would the combined market share of the involved insurance companies exceed five percent of the total market;

(b) There would be no increase in any market share; or

(c) In no market would the combined market share of the involved insurance companies exceed twelve percent of the total market, and in no market would the market share increase by more than two percent of the total market.

For the purpose of paragraph 5 of subdivision b, a "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurance companies licensed to do business in this state.

(6) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business.

(7) An acquisition of an insurance company whose domiciliary commissioner affirmatively finds that the insurance company is in failing condition, there is a lack of feasible alternative to improving the insurance company's condition, the public benefits of improving the insurance company's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and such findings are communicated by the domiciliary commissioner to the commissioner of this state.

SECTION 12. AMENDMENT. Section 26.1-18-29 of the North Dakota Century Code is amended and reenacted as follows:

[2] **26.1-18-29. Rehabilitation, liquidation, or conservation of health maintenance organization.** Any rehabilitation, liquidation, or conservation of a health maintenance organization is deemed to be the rehabilitation, liquidation, or conservation of an insurance company and must be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in section ~~26.1-07-09~~ 26.1-06.1-16.

SECTION 13. AMENDMENT. Section 26.1-25-02 of the North Dakota Century Code is amended and reenacted as follows:

[3] **26.1-25-02. Scope of chapter.**

1. This chapter applies to fire, marine, inland marine, hail, windstorm, cyclone, tornado, explosion, water damage, and all other forms of insurance on property, and the loss of use and occupancy thereof, and to casualty insurance, including fidelity, surety, and guaranty bonds, and all other forms of motor vehicle insurance, as defined and set forth in subsections 1, 2, 4, 5, 6, and 7 of section 26.1-12-11 and in subsections 1, 2, 5, 6, and 7 of section 26.1-05-02, except as hereinafter excluded. Inland marine insurance is deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance. This chapter does not apply to:

~~1.~~ a. Reinsurance other than joint reinsurance to the extent stated in section ~~26.1-25-11~~ 26.1-25-10.5.

~~2.~~ b. Accident and health insurance.

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[2] NOTE: Section 26.1-18-29 was also repealed by section 49 of Senate Bill No. 2231, chapter 292.

[3] NOTE: Section 26.1-25-02 was also amended by section 4 of House Bill No. 1166, chapter 293.

~~3.~~ c. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

~~4.~~ d. Insurance against loss or damage to aircraft or against liability, other than workers' compensation and employers' liability, arising out of ownership, maintenance, or use of aircraft.

2. This chapter applies to every insurer, including every stock or mutual company, reciprocal or interinsurance exchange, authorized by any provision of the laws of this state to transact any of the kinds of insurance. However, except with respect to policies issued pursuant to subsection 2 of section 26.1-13-15, this chapter does not apply to county mutual insurance companies organized under chapter 26.1-13.

3. If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory act of this state, an insurer to which both acts are otherwise applicable shall file with the commissioner a designation as to which rate regulatory act is applicable to it with respect to the kind of insurance, subdivision, or combination thereof, or type of coverage.

SECTION 14. AMENDMENT. Subsection 1 of section 26.1-25-10.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Authorization.~~ Notwithstanding subdivision a of subsection 2 of section ~~26.1-25-10.1~~ 26.1-25-10.2, insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms may not be deemed an advisory organization.

SECTION 15. AMENDMENT. Section 27-11-20 of the North Dakota Century Code is amended and reenacted as follows:

27-11-20. Oath and pledge to be taken by applicants admitted to the bar. Each applicant for admission to the bar of this state, upon being admitted to practice as an attorney and counselor at law, shall take, in open court, the oath prescribed in section ~~211 of the constitution~~ 4 of article XI of the Constitution of North Dakota, and such additional oath or pledge as the supreme court may require.

SECTION 16. AMENDMENT. Subsection 7 of section 39-06.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. For a violation of any traffic parking regulations, except a violation of subsection ~~9~~ 10 of section 39-01-15, on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

SECTION 17. AMENDMENT. Subsection 3 of section 44-04-19.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Attorney work product" means any document or record which:

   a. Was prepared by an attorney representing a public agency or prepared at such an attorney's express direction;

   b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the agency; and

   c. Was prepared exclusively for civil or criminal litigation ~~or~~, for adversarial administrative proceedings, or in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.

SECTION 18. AMENDMENT. Section 51-18-04.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-18-04.1. Notice to consumer - Contract requirement for sales by telepromoter. In addition to the requirements of section ~~51-15-04~~ 51-18-04, an agreement by a consumer to obtain a consumer good or service from a telepromoter is not enforceable unless it contains the following information:

1. The name, address, and telephone number of the telepromoter;

2. A statement of the price or fee, including any handling, shipping, delivery, or other charge being requested;

3. A detailed description of the consumer good or service; and

4. In a type size in a minimum of twelve points, in a space immediately preceding the space allotted for the consumer signature, the statement: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT AND RETURN IT TO THE SELLER."

SECTION 19. AMENDMENT. Section 54-03-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-25. Introduction of bills and amendments - Actuarial impact statement. Beginning December 1, 1992, a legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless job service North Dakota has reviewed the measure ~~has been reviewed by the workers compensation bureau~~ and ~~the bureau~~ has determined whether the measure will have an actuarial impact on the workers' compensation fund. If the ~~bureau~~ job service North Dakota determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by an actuarial impact statement prepared, at the expense of the ~~bureau~~ job service North Dakota, by the actuary employed by the ~~bureau~~ job service North Dakota. No amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by either a statement prepared by the ~~bureau~~ job service North Dakota, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the ~~bureau~~ job service North Dakota, by the actuary employed by the ~~bureau~~ job service North Dakota.

SECTION 20. AMENDMENT. Subsection 1 of section 57-40.2-02.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes and for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, ~~and section 57-40.2-03.4 relating to the reduced rate for manufacturing equipment purchased by a new business,~~ an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

SECTION 21. AMENDMENT. Section 61-24.5-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[4] **61-24.5-10. District budget - Tax levy.** Beginning in 1992, and each year thereafter, through December 31, 1997, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. The power to levy a tax does not extend beyond December 31, 1997. All moneys collected pursuant to such levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section ~~61-12.1-11~~ 61-16.1-11.

SECTION 22. AMENDMENT. Subsection 20 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20. "Grandchild" and the terms defined in subsections ~~4~~ 5 and ~~6~~ 7 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.

SECTION 23. AMENDMENT. Subsection 7 of section 65-05-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit

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[4] NOTE: Section 61-24.5-10 was also amended by section 1 of Senate Bill No. 2329, chapter 608.

on the duration of partial disability benefits in cases of catastrophic injury as defined in section ~~65-05.1-06~~ 65-05.1-06.1. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.

SECTION 24. AMENDMENT. Subsection 2 of section 65-05.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~In the event that~~ If the injured employee is unable to obtain substantial employment as a direct result of injury, the employee shall promptly notify the bureau under subdivision b of subsection ~~6~~ 7 of section 65-05.1-01.

Approved March 12, 1993
Filed March 12, 1993

CHAPTER 46

HOUSE BILL NO. 1049
(Legislative Council)
(Interim Legislative Management Committee)

JOURNAL ENTRY RULE

AN ACT relating to the journal entry rule in determining the validity of enrolled measures; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Journal entry rule - Presumption of validity of legislation. A bill or resolution passed by the senate and the house of representatives of the legislative assembly as evidenced by the journals of the senate and house is presumed to be the bill or resolution that is signed by the presiding officers of the senate and house, presented to the governor, and filed with the secretary of state. If there is a difference between versions of a bill, the legislative council staff shall direct the publisher of the code to publish the law according to this section. The law as published must be presumed valid until determined otherwise by an appropriate court.

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

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 47

SENATE BILL NO. 2439
(Senators Nelson, Mathern)

FACSIMILE SIGNATURES

AN ACT to create and enact a new section to chapter 1-06 of the North Dakota Century Code, relating to validation of documents executed with facsimile signatures; and to amend and reenact section 44-08-13 of the North Dakota Century Code, relating to use of a facsimile signature.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-06 of the North Dakota Century Code is created and enacted as follows:

Validation of documents executed with facsimile signatures. Licenses, permits, or other authorizations provided for by the statutes, ordinances, resolutions, or rules of this state, any city, county, school district, or other political subdivision which were executed with a facsimile signature which was on file with the appropriate office at the time of execution may not be declared invalid solely by virtue of the fact they were executed with a facsimile signature.

SECTION 2. AMENDMENT. Section 44-08-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-13. Facsimile signature. Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, county, school district, or other political subdivision, with the clerk or business manager of such subdivision, the officer's manual signature certified to under oath, may execute or cause to be executed with a facsimile signature in lieu of a manual signature:

1. Any public security, provided that at least one signature required or permitted to be placed thereon, or the signature of an authenticating agent or agents designated in writing by the issuer of the security or by the person whose signature is required or permitted to be placed thereon, must be manually subscribed, but no such manual subscription may be required as to interest coupons attached to such security.
2. Any instrument of payment.
3. Any lease issued by the board of university and school lands.
4. Any license, permit, or other authorization provided for by the statutes, ordinances, resolutions, or rules of this state, any city, county, school district, or other political subdivision in this state.

Upon compliance with sections 44-08-12 through 44-08-14 by the authorized officer, a facsimile signature has the same legal effect as a manual signature.

Approved March 24, 1993
Filed March 25, 1993

AGRICULTURE

CHAPTER 48

HOUSE BILL NO. 1455
(Representatives Rennerfeldt, Nichols, Skarphol)
(Senators Nelson, Tallackson)

OILY WASTE DISPOSAL RESEARCH

AN ACT relating to the acceptance and use of certain grant funds by the Williston research center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Grant funds - Acceptance - Use. The Williston research center may accept and expend grant funds for the purpose of overseeing research related to the disposal of oily waste on land in this state. The center may collect, store, and distribute data on that research but may not incur expenses in connection with the research, other than expenses reimbursable by the grant funds.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 49

SENATE BILL NO. 2138
(Agriculture Committee)
(At the request of the State Seed Arbitration Board)

SEED ARBITRATION BOARD COMPENSATION

AN ACT to amend and reenact section 4-09-03.1 of the North Dakota Century Code, relating to compensation and expense reimbursement of members of the state seed arbitration board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed arbitration board. The state seed arbitration board consists of the commissioner of agriculture, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees. Each board member is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 50

HOUSE BILL NO. 1437
(Representative Nicholas)

SEED LABELING, REPORTS, AND FEES

AN ACT to amend and reenact sections 4-09-14.1, 4-09-14.3, 4-09-14.4, and 4-09-20 of the North Dakota Century Code, relating to seed labeling requirements, penalty for late filing of seed permit reports, and collection of royalty fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-14.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.1. Seed sales - Seed labeling fee permit - Exception. No person may ~~sell~~ label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a seed labeling fee permit has been obtained from the seed department and has been issued to the ~~seller~~ labeler pursuant to section 4-09-14.4.

SECTION 2. AMENDMENT. Section 4-09-14.3 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.3. Fees. The fees required by section 4-09-14.1 shall be pursuant to the following fee schedule:

1. A container containing:

100 to 160 lbs. of seed	eight cents
60 to 99 lbs. of seed	seven cents
30 to 59 lbs. of seed	six cents
15 to 29 lbs. of seed	five cents
1/2 to 14 lbs. of seed	four cents

2. Cereal grains, per 100 pounds [45.36 kilograms], two cents
   Flax, soybeans, edible beans, per 100 pounds [45.36 kilograms], four cents

3. Seeds sold in bulk, and not specified in subsection 2, per 100 pounds, [45.36 kilograms], six cents.

4. Whenever seed is sold at wholesale or on consignment or commission in packets of eight ounces [226.80 grams] or less, the fee shall be fifty cents per twenty-five dollars of wholesale value, or fraction thereof, of the packets in the lot container.

SECTION 3. AMENDMENT. Section 4-09-14.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. The commissioner is authorized at the commissioner's discretion, under such rules as may be promulgated, to issue a permit to any person to ~~sell~~ label agricultural, vegetable, flower, and tree and shrub seeds in North

Dakota. The person shall apply to the commissioner for a permit and shall furnish the seed department with periodic statements of all seeds sold in North Dakota when requested by the seed commissioner. Each statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3. Statements that must be furnished for each reporting period, must be delivered to the commissioner not later than ~~thirty~~ thirty-one days after the end of each reporting period, and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner may require as part of the label on all seed sold. The commissioner or the commissioner's authorized agent has the right at all reasonable times to examine the records of any permitholder to verify the correctness of its statements. The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually.

SECTION 4. AMENDMENT. Section 4-09-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-20. Fees and collections - Disposition. All moneys arising from the collection of fees and other charges under this chapter must be deposited by the commissioner with the state treasurer and credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations, upon vouchers signed by the commissioner and warrant-checks prepared by the office of management and budget. Royalty, research, or patent fees will be collected on protected varieties when necessary by the commissioner and dispersed less cost of collection. The state treasurer shall, at the direction of the commission, provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit twenty percent of the income from the investment of the moneys in the general fund and the remaining eighty percent of the investment income in the seed department revolving fund.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 51

HOUSE BILL NO. 1203
(Agriculture Committee)
(At the request of the Office of Management and Budget)

AGRICULTURAL COMMODITY GROUPS REPORTS AND APPROPRIATIONS

AN ACT to create and enact a new section to chapter 4-24 of the North Dakota Century Code, relating to reports by agricultural commodity groups to the legislative assembly; to amend and reenact sections 4-10.1-09, 4-10.2-08, 4-10.3-08, 4-10.6-10, 4-12.1-03, 4-13.1-05, 4-18.1-12, 4-24-09, and 4-28-08 of the North Dakota Century Code, relating to continuing appropriations for the North Dakota potato council, the North Dakota oilseed council, the North Dakota edible bean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, and the North Dakota state wheat commission; and to provide continuing appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

[1] **4-10.1-09. Tax levied - Continuing appropriation.** An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all potatoes grown in the state or sold to a designated handler. The council, in its discretion, may increase the assessment by not more than one-half cent per hundredweight [45.36 kilograms] per year until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached. This assessment must not be imposed upon any potatoes retained by growers to be used for seed purposes or for consumption by the grower. This assessment is due upon any identifiable lot or quantity of potatoes.

A designated handler of potatoes shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, place or places of business, and location of loading and shipping places of agents of the first handler, the names and addresses of the several persons constituting the firm partnership, and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any potatoes until it has furnished a certificate as required by this section.

Every designated handler of potatoes shall collect the assessment imposed under this section by charging and collecting from the seller the assessment per

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[1] NOTE: Section 4-10.1-09 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all potatoes subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw potatoes, which may be examined by the commissioner, or his designee, at all reasonable times. Every designated handler shall report to the council stating the quantity of potatoes received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving fund designated "spud fund" ~~to be used exclusively to carry out the intent and~~. All money in the spud fund is appropriated on a continuing basis to the council for carrying out the purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 2. AMENDMENT. Section 4-10.2-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **4-10.2-08. Assessments levied - Continuing appropriation.** An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a first purchaser, and an assessment at the rate of two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

The first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the first purchaser.

Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable

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[2] NOTE: Section 4-10.2-08 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

times. Every first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of ~~an~~ a special revolving account or accounts designated "oilseed fund". All money in the oilseed fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 3. AMENDMENT. Section 4-10.3-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **4-10.3-08. Tax levies - Collection - Reports** - Continuing appropriation. Effective July 1, 1977, an assessment at the rate of five cents per hundredweight [45.36 kilograms] must be levied and imposed upon all edible beans grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of edible beans.

A designated handler of edible beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any edible beans until it has furnished a certificate as required by this section.

The first designated handler in North Dakota of edible beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of five cents per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all edible beans subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw edible beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of edible beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this

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[3] NOTE: Section 4-10.3-08 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

chapter must be paid to the council for deposit in the state treasury to the credit of ~~an~~ a special revolving account or accounts designated "edible bean fund". All money in the edible bean fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 4. AMENDMENT. Section 4-10.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.6-10. Records by designated handlers - Continuing appropriation. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of corn which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a manner and at a time prescribed by the council. The assessments collected by the designated handler must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of ~~an~~ a special revolving account designated as the corn fund. All money in the corn fund is appropriated on a continuing basis to the council to be used exclusively to carry out this chapter. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 5. AMENDMENT. Section 4-12.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.1-03. Fees - Special fund - Continuing appropriation. The association may charge fees for items sold to promote honey. The state treasurer shall deposit all moneys received under this chapter in a special revolving fund to be known as the honey fund. All moneys deposited in the honey fund ~~must, subject to legislative appropriation, be expended by~~ are appropriated on a continuing basis to the commissioner for use pursuant to this chapter.

SECTION 6. AMENDMENT. Section 4-13.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-13.1-05. Special fund - Continuing appropriation. The state treasurer shall deposit all moneys received under this chapter in a special revolving fund to be known as the turkey fund. All moneys deposited in the turkey fund ~~must, subject to legislative appropriation, be expended by~~ are appropriated on a continuing basis to the commissioner for use pursuant to this chapter.

SECTION 7. AMENDMENT. Section 4-18.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4-18.1-12. Assessments by the board - Continuing appropriation. In order to obtain funds for the administration and enforcement of the provisions of this chapter, the board shall levy an assessment upon all licensed processors of not more than eight cents per hundredweight [45.36 kilograms] on milk or milk equivalents used for the manufacture of milk products and frozen dairy products processed by such processors. However, this assessment is not applicable to milk products or frozen dairy products sold in other states.

This assessment must be paid quarterly on or before the fifteenth of July, October, January, and April of each year. Each such payment must be equal to the assessment due in connection with milk products and frozen dairy products processed during the calendar quarter which ends on the last day of the preceding month.

All such assessments must be deposited by the board in the state treasury in a special revolving fund to be known as the "milk stabilization fund". All expenses incurred in connection with the enforcement and administration of this chapter, including the salaries of employees and assistants must be paid out of the said "milk stabilization fund" ~~within the limits of legislative appropriations~~. All money in the milk stabilization fund is appropriated on a continuing basis to the board for carrying out the purposes of this chapter. Regular audits of the board's accounts must be conducted in accordance with chapter 54-10.

SECTION 8. AMENDMENT. Section 4-24-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, edible bean fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. ~~These moneys may be expended only within the limits of legislative appropriation.~~

SECTION 9. A new section to chapter 4-24 of the North Dakota Century Code is created and enacted as follows:

Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota edible bean council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. The report must contain a summarization of the activities of the respective commodity groups during the preceding biennium, and must include a financial statement summarizing the revenues and expenditures of the respective agricultural commodity group for the current biennium and the anticipated revenues and expenditures for the next biennium.

SECTION 10. AMENDMENT. Section 4-28-08 of the North Dakota Century Code is amended and reenacted as follows:

4-28-08. State wheat commission fund - ~~Appropriation~~ Continuing appropriation. Each first purchaser shall make quarterly reports and returns to the commission, on such forms as must be prescribed by the commission, on or before the twentieth day of the month next succeeding each calendar quarterly period, commencing with the calendar quarter ending September 30, 1959, and with each such report and return shall remit to the commission, in the form of a remittance payable to the state treasurer, the tax due. The commission shall transmit all such payments to the state treasurer to be deposited in the state treasury to the credit of a special revolving fund to be known as the "state wheat commission fund". ~~The provisions of section 54-27-19 do not apply to appropriations to or for the wheat commission, nor does any part of such fund and appropriations revert at the expiration of any biennium.~~ All money in the state wheat commission fund is appropriated on a continuing basis to the commission for carrying out the purposes of this chapter. Expenditures from such fund ~~or appropriation,~~ may be made upon vouchers duly approved by the commission to carry out the provisions of this chapter. Regular audits of the commission's accounts must be conducted in accordance with chapter 54-10.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 52

SENATE BILL NO. 2334
(Senator Krauter)
(Representative Belter)

COMMODITY LEVIES AND HANDLERS

AN ACT to amend and reenact subsection 1 of section 4-10.4-08, section 4-28-07, subsection 6 of section 60-02-01, and subsection 6 of section 60-03-01 of the North Dakota Century Code, relating to levies on certain agricultural commodities and to the definition of public warehouseman and roving grain and hay buyer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-10.4-08 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Effective July 1, 1983, a~~ A tax at the rate of five mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state ~~and~~ or sold to a first purchaser. This tax is due upon any identifiable lot or quantity of barley.

SECTION 2. AMENDMENT. Section 4-28-07 of the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy. ~~There is hereby levied and imposed, effective July 1, 1983, a~~ A tax of five mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state ~~and~~ or sold through commercial channels by a producer to a first purchaser~~, such~~. The tax ~~to~~ must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] are not accurately determined at the time of the lien, pledge, or mortgage. At the time of sale, the purchaser shall issue and deliver to the producer a record of the transaction in such manner as the commission may prescribe.

Any producer subject to the deduction provided in this chapter may, within sixty days following such deduction or final settlement, make application by personal letter to the wheat commission for a refund application blank. Upon the return of ~~said~~ the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to such deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.

The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in

which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

SECTION 3. AMENDMENT. Subsection 6 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Public warehouseman" means the person operating a public warehouse ~~which~~ that is located or doing business within this state, whether or not such owner or operator resides within this state ~~or not~~. The term does not include a person who is permitted to sell seed under chapter 4-09, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.

[1] **SECTION 4. AMENDMENT.** Subsection 6 of section 60-03-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Roving grain or hay buyer" means any person, other than a public warehouseman, who is in the business of buying grain or hay from the owner for resale or markets grain or hay on behalf of the owner. ~~"Roving grain or hay buyer"~~ The term does not include ~~any~~:

   a. A producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay grown by the producer.

   b. A person who is permitted to sell seed under chapter 4-09, if that person buys grain only for processing and subsequent resale as seed.

   c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.

Approved April 7, 1993
Filed April 8, 1993

[1] NOTE: Subsection 6 of section 60-03-01 was also amended by section 1 of House Bill No. 1134, chapter 587.

CHAPTER 53

HOUSE BILL NO. 1412
(Representatives Holm, Aarsvold, Grumbo)

SOYBEAN COUNCIL ELECTIONS

AN ACT to amend and reenact section 4-10.5-02 of the North Dakota Century Code, relating to North Dakota soybean council elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.5-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.5-02. North Dakota soybean council - Membership - Election - Term. ~~There is hereby established a North Dakota soybean council.~~ The North Dakota soybean council must be composed of one participating grower elected from each of the districts established in section 4-10.5-03. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council. Every elected council member must be a ~~citizen of the state and a bona fide~~ resident of and participating grower in the district the member represents. The term of each elected member is three years, beginning on April first of the year of election, except that initially two members must be elected for three-year terms; three members must be elected for two-year terms; and three members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. ~~The first election must be held before August 15, 1985, and all~~ All elections ~~thereafter~~ must be conducted ~~between January fifteenth and~~ no later than April first of each year. No elected member of the council is eligible to serve more than two consecutive three-year terms.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 54

SENATE BILL NO. 2223
(Senators W. Stenehjem, Langley, Krebsbach)
(Representatives Gorman, Mahoney, Shide)

LIMITED LIABILITY COMPANY REVISIONS

AN ACT to create and enact chapter 10-06.1, subdivisions q and r to subsection 3 of section 10-19.1-10, a new subdivision to subsection 5 of section 10-19.1-10, a new subsection to section 10-19.1-14, a new subsection to section 10-19.1-21, a new subsection to section 10-19.1-22, two new subsections to section 10-19.1-50, sections 10-19.1-61.1, 10-19.1-73.1, a new subsection to section 10-19.1-80, a new subsection to section 10-19.1-91, sections 10-19.1-110.1, 10-19.1-113.1, 10-31-02.1, 10-31-03.1, 10-31-07.2, a new subdivision to subsection 1 of section 39-30-05, a new subsection to section 45-10.1-26, section 47-19-28.1, a new subsection to section 51-17-06, a new section to chapter 57-36, a new section to chapter 57-39.2, a new section to chapter 57-43.1, a new section to chapter 57-43.2, and section 61-13-03.1 of the North Dakota Century Code, relating to limited liability companies; to amend and reenact sections 4-11-03, 10-19.1-01, subsection 4 of section 10-19.1-10, sections 10-19.1-13, 10-19.1-15, 10-19.1-16, 10-19.1-18, subsection 22 of section 10-19.1-26, subsection 2 of section 10-19.1-32, subsection 1 of section 10-19.1-48, subdivision b of subsection 1 of section 10-19.1-51, subsections 3 and 4 of section 10-19.1-61, subdivision b of subsection 1 of section 10-19.1-63, subsection 3 of section 10-19.1-64, subsections 3 and 5 of section 10-19.1-65, subsections 1 and 2 of section 10-19.1-72, subsections 1 and 2 of section 10-19.1-73, section 10-19.1-74, subsection 7 of section 10-19.1-79, subsection 1 of section 10-19.1-80, section 10-19.1-84, subsections 1 and 3 of section 10-19.1-87, section 10-19.1-88, subdivision d of subsection 1 of section 10-19.1-89, subsections 1, 5, and 10 of section 10-19.1-91, subsection 1 of section 10-19.1-93, sections 10-19.1-96, 10-19.1-97, 10-19.1-98, subsection 1 of section 10-19.1-99, sections 10-19.1-100, 10-19.1-101, subsection 1 of section 10-19.1-103, subsection 3 of section 10-19.1-108, subsection 1 of section 10-19.1-109, sections 10-19.1-110, 10-19.1-115, 10-19.1-124, 10-31-01, 10-31-02, 10-31-03, 10-31-04, 10-31-05, 10-31-06, 10-31-07, 10-31-07.1, 10-31-08, 10-31-09, 10-31-10, 10-31-11, 10-31-12, 10-31-13, 10-31-13.1, 10-31-14, 12.1-03-02, 13-02.1-01, 13-03-06, 13-03.1-07, 13-05-03, 15-09-01, subdivision b of subsection 1 of section 21-11-02, subsection 2 of section 26.1-20.1-02, subdivision a of subsection 4 of section 26.1-31.1-02, section 26.1-33-35, subsection 4 of section 28-21-08, section 28-25-10, subsection 1 of section 30.1-29-10, sections 34-09-06, 34-13-03, subsection 1 of section 36-04-04, subsection 5 of section 43-15-35, subsection 2 of section 47-19-14.5, section 47-19-14.6, subdivision a of subsection 17 of section 52-01-01, subsection 4 of section 57-40.3-07, subsection 1 of section 57-43.1-14, section 57-43.1-16, subsection 8 of section 57-43.2-01, section 60-05-02, and subsection 15 of section 65-01-02 of the North Dakota Century Code, relating to limited liability companies; to provide for amendment of 677 sections of the North Dakota Century Code by reference and instructions to the legislative council; to repeal chapter 10-06, sections 10-19.1-49, 10-19.1-111, and 10-19.1-113 of

the North Dakota Century Code, relating to corporations; to provide a penalty; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4-11-03. Application for license - Contents. The application for license must be made to the commissioner in writing and under oath, and must set forth:

1. The place or places where the applicant intends to carry on the business for which the license is desired.
2. The estimated amount of business to be done monthly.
3. The amount of business done the preceding year, if any.
4. The full name of the persons constituting the firm if the applicant is a copartnership.
5. The name of the officers of the corporation and where it is incorporated if the applicant is a corporation.
6. The name of the managers of the limited liability company and where it is organized if the applicant is a limited liability company.
7. A financial statement showing in a general way the value and character of the assets and the amount of liabilities of the applicant.

~~7.~~ 8. Statements showing the applicant's eligibility for a similar license in other states in which he may have operated or is operating at the time of the application.

The fee for the license must accompany the application.

SECTION 2. Chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

10-06.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
2. "Farming or ranching corporation" means a farm or ranch corporation, joint stock company, or association which, at all times, complies with the requirements of this chapter.

3. "Farming or ranching limited liability company" means a farm or ranch limited liability company which, at all times, complies with the requirements of this chapter.

4. "Nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:

   a. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).

   b. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).

   c. A trust described in section 4947 for which a deduction is allowable under section 170.

10-06.1-02. Farming or ranching by corporations and limited liability companies prohibited. All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation or a limited liability company may be a partner in a partnership that is in the business of farming or ranching only if that corporation or limited liability company complies with this chapter.

10-06.1-03. Retention of mineral interests prohibited. For land and minerals acquired after July 1, 1985, any corporation or limited liability company that acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and which is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation or limited liability company divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation or limited liability company divests itself of the land under this chapter.

10-06.1-04. Conversion of corporations. A business corporation organized under chapter 10-19.1 may convert to a farming or ranching corporation by adopting an amendment to its articles of incorporation which specifies that the corporation elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching corporation may convert to a business corporation by adopting an amendment to its articles of incorporation. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17, and the manner in which the corporation has divested itself of its owned or leased land holdings and its business of farming or ranching.

10-06.1-05. Conversion of limited liability company. A domestic business limited liability company organized under chapter 10-32 may convert to a farming or ranching limited liability company by adopting an amendment to its articles of organization which specifies that the limited liability company elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching limited liability company may convert to a domestic business limited liability company by adopting an amendment to its articles of organization. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 and the manner in which the limited liability company has divested itself of its owned or leased land holdings and its business of farming or ranching.

10-06.1-06. Surface coal mining - Exception. A corporation or limited liability company not engaged in the business of farming or ranching may own or lease lands used for farming or ranching, when the business of such a corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of lands used for farming or ranching is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. When the necessity for owning or leasing of lands used for farming or ranching no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing such lands is subject to this chapter.

10-06.1-07. Industrial and business purpose exception. A corporation or limited liability company that is not engaged in the business of farming or ranching may own or lease land used for farming or ranching when the land is necessary for residential or commercial development; the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation or limited liability company; or for uses supportive of or ancillary to adjacent nonagricultural land for the benefit of both land parcels. The farmland or ranchland while not being immediately used for any purpose of the corporation or limited liability company must be available to be leased by persons who farm or ranch as sole proprietorships or partnerships, or by corporations or limited liability companies allowed to engage in farming or ranching under section 10-06.1-12.

10-06.1-08. Cooperative corporations allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit cooperative corporations, seventy-five percent of whose members or shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring real estate and engaging in cooperative farming or ranching.

10-06.1-09. Certain nonprofit organizations or trusts may own or lease land - Certain nonprofit organizations may continue farming or ranching - Restriction on acquisition and ownership of land.

1. A nonprofit organization or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06.1-12 may own or lease farmland or ranchland if that land is leased to a person who farms or ranches the land as a sole

proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

2. To the extent farming or ranching is essential to a nonprofit organization's charitable purposes, a nonprofit organization actively engaged in the business of farming or ranching in this state on January 1, 1983, may continue to engage in the business of farming or ranching without interruption after January 1, 1983.

3. A nonprofit organization that owned farmland or ranchland for the preservation of unique historical, archaeological, or environmental land before January 1, 1983, may continue ownership of that land without interruption after January 1, 1983. An organization that is holding land for scenic preservation shall either prohibit all hunting, or if any parcel of the land is open to hunting, it must be open to hunting by the general public.

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985.

2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

   a. The land must be maintained and managed solely for the purpose of conserving natural area and habitat for biota.

   b. Any agricultural use of the land is incidental to and in accordance with the management of the land for conservation and the agricultural use is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

   c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or

disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

10-06.1-11. Required divestiture of agricultural land. In addition to the divestiture requirements of sections 10-06.1-10 and 10-06.1-24, a nonprofit corporation that acquires land by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land within ten years after the acquisition. For purposes of this section, "ownership" means holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the corporation fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06.1-24.

10-06.1-12. Corporation or limited liability company allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit a domestic corporation or a domestic limited liability company from owning real estate and engaging in the business of farming or ranching, if the corporation or limited liability company meets all the requirements of chapter 10-19.1, 10-23, or 10-32 which are not inconsistent with this chapter. The following requirements also apply:

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.

2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or the spouse of a person so related.

3. Each shareholder or member must be an individual or one of the following:

   a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.

   b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.

4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.

5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.

6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.

7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from farming or ranching operations.

8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

10-06.1-13. Applicability of North Dakota Business Corporation Act. Chapters 10-19.1 and 10-23 are applicable to farming or ranching corporations, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business corporations except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapters 10-19.1 and 10-23.

10-06.1-14. Applicability of North Dakota Limited Liability Company Act. Chapter 10-32, except those sections which pertain to foreign limited liability companies, is applicable to farming or ranching limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.

10-06.1-15. Initial report - Shareholder and member requirements.

1. Every farming or ranching corporation or limited liability company shall file an initial report with its articles of incorporation. The report must be signed by the incorporators or organizers and must contain the following:

   a. The name of the corporation or limited liability company.

   b. The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.

   c. With respect to each shareholder or member:

      (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;

      (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;

(3) The relationship of each;

(4) A statement of whether each is a citizen or permanent resident alien of the United States; and

(5) A statement of whether each is actively engaged in operating the farm or ranch, whether each resides on the farm or ranch, and whether each depends principally on farming or ranching for a livelihood.

d. With respect to management:

(1) If a corporation, then the names and addresses of the officers and members of the board of directors; or

(2) If a limited liability company, then the names and addresses of the managers and members of the board of governors.

e. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.

2. A corporation or a limited liability company may not commence farming or ranching in this state until the secretary of state has received and filed the articles of incorporation or articles of organization and the initial report required by this section. The corporation or limited liability company shall furnish to the official county newspaper of each county or counties in which any land is owned or leased by the corporation or limited liability company a legal notice reporting the following:

a. The name of the corporation or limited liability company and its shareholders or members as listed in the initial report.

b. A statement to the effect that the corporation or limited liability company has reported that it owns or leases land used for farming or ranching in the county and that a description of that land is available for inspection at the secretary of state's office.

10-06.1-16. Share and membership interest transfer records. Every corporation owning or leasing land used for farming or ranching or engaged in farming or ranching after June 30, 1981, shall keep a record of transfers of shares or transfers of interests in the corporation. Every limited liability company owning or leasing land used for farming or ranching or engaged in farming or ranching, shall keep a record of transfers of membership interests in the limited liability company. If a corporation, the corporation's secretary shall cause to be recorded in the record all transfers of shares or transfers of interests among and between the corporation and its respective shareholders or holders of interest. If a limited liability company, the limited liability company's secretary shall cause to be recorded in the record all transfers of membership interests among and between the limited liability company and its respective members. The record must contain at least the following: the names of the transferor and transferee, their relationship, the date of the transfer and, if a corporation, the number of shares or the percentage of interests transferred or, if a limited liability company, the number or percentage of membership interests transferred.

10-06.1-17. Annual report - Contents - Filing requirements. Prior to April fifteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state a report executed by its president, a vice president, secretary, or treasurer containing all of the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.
3. With respect to each shareholder or member:
   a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
   b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
   c. The relationship of each;
   d. A statement of whether each is a citizen or permanent resident alien of the United States; and
   e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
4. With respect to management:
   a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
   b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
5. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
6. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years, or for each year of its existence if less than five years.
7. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.

10-06.1-18. Reports of corporations and limited liability companies not engaged in farming or ranching. Any business or nonprofit corporation and any limited liability company not engaged in the business of farming or ranching which owns or leases a tract of land used for farming or ranching which is larger than twenty acres [8.09 hectares] in size shall file with the attorney general within twelve months of any transaction involving the purchase, sale, or surface leasing of such farmland or ranchland by that corporation or limited liability company, a report containing all of the following information:

1. The name of the corporation or limited liability company and its place of incorporation or organization and, if a nonprofit corporation, a copy of its section 501(c)(3) exemption letter from the internal revenue service.

2. The address of the registered office of the corporation or limited liability company in this state and the name and address of its registered agent in this state.

3. The acreage [hectarage] and location listed by section, township, range, and county of all such land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.

4. The date and method of acquisition or disposal of such farmland or ranchland.

10-06.1-19. Exemption from certain disclosure and other requirements for certain organizations. Sections 10-06.1-12, 10-06.1-15, 10-06.1-17, and 10-06.1-18 do not apply to nonprofit organizations or to corporations or limited liability companies such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06.1-12.

10-06.1-20. Failure to file report - Penalty. Every corporation or limited liability company which fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

10-06.1-21. Secretary of state to transmit information of noncompliance. If the secretary of state finds from the annual report that the corporation or limited liability company is not in compliance with the requirements of section 10-06.1-12, the secretary of state shall transmit such information to the attorney general and the governor.

10-06.1-22. Tax commissioner to compare returns and reports. Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations or limited liability companies which report on income from farming or ranching operations and shall compare such returns with the annual report required to be filed with the secretary of state by section 10-06.1-17 and shall forward any apparent violations to the attorney general and the governor.

10-06.1-23. Attorney general to conduct random compliance program. Each year the attorney general shall select at random at least five percent of the total number of corporations and limited liability companies authorized by this chapter for requests for information to determine compliance with this chapter. For such purpose, the attorney general may request affidavits, share transfer records,

certified copies of marriage licenses, birth certificates, deeds, leases, and such other records and documents necessary to determine compliance.

10-06.1-24. Enforcement - Penalty.

1. The register of deeds shall mail or deliver a copy of every instrument filed or recorded within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation or limited liability company. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or ranchland used in violation of this chapter is situated if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation or limited liability company is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming or ranching operations. Any corporation or limited liability company that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the secretary of state.

2. The divestment period is deemed to be a covenant running with the title to the land against any corporate or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to do business under this chapter.

3. Any land not divested within the divestment period prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.

4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation or limited liability company may acquire farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien

or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.

6. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant may not exceed seven percent of the appraised value.

7. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company contracts for the sale of the land to the prior mortgagor from whom it was acquired, and if documents evidencing the purchase agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price may not exceed the price determined by the appraisers.

8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.

9. If a corporation or limited liability company holds land pending divestiture, and the holding is not otherwise governed by this section, the land must be leased to persons actually engaged in farming or ranching and a disposal may not be to a corporation or limited liability company unless ownership by that corporation or limited liability company is authorized under this chapter.

10. Any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

10-06.1-25. Private enforcement. This chapter may be enforced in the same manner as provided in section 10-06.1-24 by any corporation or limited liability company authorized to engage in farming or ranching by this chapter or any resident of legal age of a county in which the land owned or leased by a corporation or

limited liability company in violation of this chapter is located. If such action is successful, all costs of the action must be assessed against the defendant and a reasonable attorney fee must be allowed the plaintiff. If judgment is rendered for the defendant, such costs and a reasonable attorney fee for the defendant must be paid by the plaintiff.

10-06.1-26. Protection of minority shareholders. If a shareholder owns less than fifty percent of the shares of a farming or ranching corporation doing business under this chapter, and if the terms and conditions for the repurchase of those shares by the corporation or by the other shareholders are not set forth in the bylaws or the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the corporation, then the disposition of such shares must be determined by this section upon the withdrawal of the shareholder. Any shareholder who desires to withdraw from the corporation shall first offer the shares for sale to the remaining shareholders in proportion to the shares owned by them. In the event not all of the shareholders wish to purchase the shares, any one shareholder may purchase all of the shares of the withdrawing shareholder. In the event no shareholder desires to purchase the shares of a withdrawing shareholder, then the corporation may purchase the shares. If the corporation chooses not to purchase the shares of the withdrawing shareholder, then the withdrawing shareholder may sell the shares to any other person eligible to be a shareholder. If the withdrawing shareholder is unable to sell the shares to any other person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation. Upon a finding that the withdrawing shareholder cannot sell the shares at a fair price, the court shall enter an order directing that the corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the shares of the withdrawing shareholder at a fair price as determined by the court and that if the shares of the withdrawing shareholder are not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their ownership of shares. For the purpose of this section, a "fair" price for the shares of the withdrawing shareholder must be determined as though the shares were being valued for federal gift tax purposes under the Internal Revenue Code.

10-06.1-27. Protection of minority members. If a member owns less than fifty percent of the membership interest of a farming or ranching limited liability company doing business under this chapter, and if the terms and conditions for the repurchase of that membership interest by the limited liability company or by the other members are not set forth in the operating agreement, the instrument which transferred the membership interest to the member, or are not the subject of a business continuation agreement or an agreement between that member and the limited liability company, then the disposition of such membership interest must be determined by this section upon the withdrawal of the member. Any member who desires to withdraw from the limited liability company shall first offer the membership interest for sale to the remaining members in proportion to the membership interests owned by them. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, then the limited liability company itself may purchase the membership interest. If the limited liability company chooses not to purchase the

membership interest of the withdrawing member, then the withdrawing member may sell the membership interest to any other person eligible to be a member. In the event the withdrawing member is unable to sell the membership interest to any other person eligible to become a member, then the withdrawing member may bring an action in district court to terminate the limited liability company. Upon a finding that the withdrawing member cannot sell the membership interest at a fair price, the court shall enter an order directing that the limited liability company itself or any of the remaining members pro rata or otherwise, shall have twelve months from the date of the court's order to purchase the membership interest of the withdrawing member at a fair price as determined by the court and that if the membership interest of the withdrawing member is not completely purchased at said price, the limited liability company shall be dissolved and the assets of the limited liability company shall be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to their membership interest ownership. For the purpose of this section, a "fair" price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

SECTION 3. AMENDMENT. Section 10-19.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.

2. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.

3. "Articles" means~~, in~~:

   a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.

   b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

4. "Board" or "board of directors" means the board of directors of a corporation.

5. "Board member" means:

   a. An individual serving on the board of directors in the case of a corporation; and

b. An individual serving on the board of governors in the case of a limited liability company.

6. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

~~6.~~ 7. "Closely held corporation" means a corporation which does not have more than thirty-five shareholders.

~~7.~~ 8. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.

~~8.~~ 9. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

~~9.~~ 10. "Director" means a member of the board.

~~10.~~ 11. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

~~11.~~ 12. "Filed with the secretary of state" means that a signed original of a document, together with the fees provided in chapter 10-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.

~~12.~~ 13. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.

14. "Foreign limited liability company" means a limited liability company organized for profit that is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.

15. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

~~13.~~ 16. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

~~14.~~ 17. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

~~15.~~ 18. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

19. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

~~16.~~ 20. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.

a. In all other cases, "notice" is given to a person ~~when~~:

(1) When mailed to the person at an address designated by the person or at the last known address of the person~~,~~; or ~~when~~

(2) When handed to the person~~,~~; or ~~when~~

(3) When left at the office of the person with a clerk or other person in charge of the office~~,~~; or ~~if~~

(a) If there is no one in charge, when left in a conspicuous place in the office~~,~~; or ~~if~~

(b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.

b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.

c. Notice is deemed received when it is given.

~~17.~~ 21. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 10-19.1-56.

~~18.~~ 22. "Organization" means a domestic or foreign corporation, limited liability company, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

~~19.~~ 23. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

24. "Owners" means:

a. Shareholders in the case of a corporation; and

b. Members in the case of a limited liability company.

25. "Ownership interests" means:

a. Shares in the case of a corporation; and

b. Membership interests in the case of a limited liability company.

~~20.~~ 26. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.

~~21.~~ 27. "Person" includes an individual and an organization.

~~22.~~ 28. "Principal executive office" means an office where the elected or appointed president of a corporation has an office. If the corporation has no elected or appointed president "principal executive office" means the registered office of the corporation.

~~23.~~ 29. "Related corporation" of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.

~~24.~~ 30. "Security" has the meaning given it in subsection ~~12~~ 13 of section 10-04-02.

~~25.~~ 31. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~26.~~ 32. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

~~27.~~ 33. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.

~~28.~~ 34. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

~~29.~~ 35. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~30.~~ 36. "Subsidiary" of a specified corporation means ~~a~~:

a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations or limited liability companies, by the specified corporation; or

b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.

~~31.~~ 37. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~32.~~ 38. "Vote" includes authorization by written action.

~~33.~~ 39. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 4. Subdivisions q and r to subsection 3 of section 10-19.1-10 of the North Dakota Century Code are created and enacted as follows:

q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.

r. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.

SECTION 5. AMENDMENT. Subsection 4 of section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

a. Directors serve for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.

b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.

c. The method provided in section 10-19.1-41 must be used for removal of directors.

d. The method provided in section 10-19.1-42 must be used for filling board vacancies.

e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.

f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.

g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.

h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.

i. The board may establish a special litigation committee ~~of disinterested persons~~ as provided in section ~~10-19.1-49~~ 10-19.1-48.

j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.

k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.

l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 2 of section 10-19.1-73.

m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.

n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of an entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.

o. ~~Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.~~

~~p.~~ Indemnification of certain persons is required as provided in section 10-19.1-91.

~~q.~~ p. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.

SECTION 6. A new subdivision to subsection 5 of section 10-19.1-10 of the North Dakota Century Code is created and enacted as follows:

A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.

SECTION 7. AMENDMENT. Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-13. Corporate name.

1. The corporate name:

   a. Must be in the English language or in any other language expressed in English letters or characters.

   b. Must contain the word "corporation", "incorporated", or "limited", or must contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." but that word or abbreviation may not be immediately preceded by the word "and" or the character "&".

   c. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than one or more business purposes for which a corporation may be incorporated under this chapter.

   d. May not be the same as, or deceptively similar to, the name of a domestic or ~~a~~ foreign corporation, limited liability company, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the articles:

      (1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, or partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or

      (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

   This subsection does not affect the right of a domestic corporation existing on July 1, 1985, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.

3. This section and section 10-19.1-14 do not ~~abrogate~~:

   a. Abrogate or limit ~~the~~:

      (1) The law of unfair competition or unfair practices, nor ~~chapter~~

      (2) Chapter 47-25, nor ~~the~~

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or ~~any~~

(4) Any other rights to the exclusive use of names or symbols, nor ~~derogate~~

b. Derogate the common law or the principles of equity.

4. A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to transact business in, this state.

5. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

6. A corporation that is involuntarily dissolved by the secretary of state pursuant to section 10-23-02.2 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subdivision d of subsection 1. A corporation which cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of this section.

SECTION 8. A new subsection to section 10-19.1-14 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in chapter 10-23.

SECTION 9. AMENDMENT. Section 10-19.1-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-15. Registered office - Registered agent.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

2. A corporation shall designate in its articles a registered agent. The registered agent may be an individual residing in this state, a domestic corporation or limited liability company, or a foreign corporation or

foreign limited liability company authorized to transact business in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 10. AMENDMENT. Section 10-19.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.**

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:

   a. The name of the corporation.

   b. ~~The present record address of its registered office.~~

   ~~c. The name of its registered agent.~~

   ~~d.~~ If the address of its registered office is to be changed, the new address of its registered office.

   ~~e.~~ c. If its registered agent is to be changed, the name of its new registered agent.

   ~~f.~~ d. If the name of its registered agent is to be changed, the name of its registered agent as changed.

   ~~g.~~ e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

   ~~h.~~ f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.

2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered

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[1] NOTE: Section 10-19.1-16 was also amended by section 1 of House Bill No. 1506, chapter 91.

agent, need not be responsive to subdivision e c or ~~h~~ f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

SECTION 11. AMENDMENT. Section 10-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-18. Procedure for amendment before issuance of shares. Before the issuance of shares by a corporation, the articles may be amended pursuant to section 10-19.1-30 by the incorporators or by the board. The articles may be amended by the board to change a statement pursuant to subsection 3 of section 10-19.1-61, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

SECTION 12. A new subsection to section 10-19.1-21 of the North Dakota Century Code is created and enacted as follows:

A statement that the amendment has been adopted pursuant to this chapter.

SECTION 13. A new subsection to section 10-19.1-22 of the North Dakota Century Code is created and enacted as follows:

When effective under section 10-19.1.24, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

SECTION 14. AMENDMENT. Subsection 22 of section 10-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

22. A corporation shall indemnify those persons identified in section 10-19.1-91 against certain expenses and liabilities only as provided in section 10-19.1-91 and may indemnify other persons.

SECTION 15. AMENDMENT. Subsection 2 of section 10-19.1-32 of the North Dakota Century Code is amended and reenacted as follows:

2. The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take ~~or the shareholders to take after action or approval of the board~~. As to an action taken by the shareholders in that manner:

   a. The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action.

   b. The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action.

   c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board.

d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subsection.

SECTION 16. AMENDMENT. Subsection 1 of section 10-19.1-48 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board~~, except as provided in section 10-19.1-49~~.

SECTION 17. Two new subsections to section 10-19.1-50 of the North Dakota Century Code are created and enacted as follows:

A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles may not eliminate or limit the liability of a director:

a. For any breach of the director's duty of loyalty to the corporation or its shareholders;

b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

c. Under section 10-19.1-95 or 10-04-17;

d. For any transaction from which the director derived an improper personal benefit; or

e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as the short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation.

SECTION 18. AMENDMENT. Subdivision b of subsection 1 of section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the

shareholders and the contract or transaction is approved in good faith by ~~the holders of a majority of the outstanding shares, but shares owned by the interested director or directors shall not be counted in determining the presence of a quorum and shall not be voted~~:

(1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors, or

(2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;

SECTION 19. AMENDMENT. Subsections 3 and 4 of section 10-19.1-61 of the North Dakota Century Code are amended and reenacted as follows:

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series:

   a. May be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

   b. May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

4. A statement executed by an officer setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23, before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

SECTION 20. Section 10-19.1-61.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-61.1. Share dividends, divisions, and combinations.

1. A corporation may effect a share dividend or a division or combination of its shares as provided in this section. As used in this section, the terms "division" and "combination" mean dividing or combining shares of

any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

2. Articles of amendment must be adopted by the board and the shareholders under sections 10-19.1-19 and 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:

   a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

   b. The percentage of authorized shares remaining unissued after the division or combination will exceed the percentage of authorized shares that were unissued before the division or combination.

   For purposes of this subsection, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series or any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.

3. If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 10-19.1-21.

4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

5. If a division or combination that includes an amendment of the articles is effected under subsection 4, then articles of amendment must be prepared that contain the information required by section 10-19.1-21 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

SECTION 21. AMENDMENT. Subdivision b of subsection 1 of section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

b. Upon authorization ~~by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present~~ in accordance with section 10-19.1-61.1, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its

own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends ~~or splits, including reverse share splits~~, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, may be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

SECTION 22. AMENDMENT. Subsection 3 of section 10-19.1-64 of the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may issue rights to purchase ~~if:~~

   ~~a. Shares issuable upon the exercise of all outstanding rights to purchase, including the rights to purchase that are to be issued, are authorized under subsection 1 of section 10-19.1-10, and are unissued; and~~

   ~~b.~~ ~~The~~ after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.

SECTION 23. AMENDMENT. Subsections 3 and 5 of section 10-19.1-65 of the North Dakota Century Code are amended and reenacted as follows:

3. A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same class or series as ~~those~~ the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder, new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same class or series as those held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.

5. The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue. ~~For purposes of determining pursuant to this subsection the total number of shares of a class or series issued and outstanding at a particular time, all shares of that class or series issuable upon a conversion or exchange or upon the exercise of rights to purchase are considered issued and outstanding at that time.~~

SECTION 24. AMENDMENT. Subsections 1 and 2 of section 10-19.1-72 of the North Dakota Century Code are amended and reenacted as follows:

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

a. The president;

b. Two or more directors;

c. A person authorized in the articles or bylaws to call special meetings; or

d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by twenty-five percent or more of the voting power of all shares entitled to vote.

2. A shareholder or shareholders holding ~~five percent or more of the voting power of all shares entitled to vote~~ the voting power specified in subdivision d of subsection 1 may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called and held on notice no later than ninety days after receipt of the demand. If the board fails to cause a special meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73. All necessary expenses of the notice and the meeting shall be paid by the corporation.

SECTION 25. AMENDMENT. Subsections 1 and 2 of section 10-19.1-73 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Notice~~ Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote~~, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment~~ unless:

   a. The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

   b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:

      (1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

      (2) All payments of dividends, provided there were at least two sent during a twelve-month period.

   An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

2. ~~The~~ If a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting.

SECTION 26. Section 10-19.1-73.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-73.1. Electronic communications.

1. A conference among the shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders:

   a. If the same notice is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting; and

   b. If the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting.

   Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.

2. A shareholder may participate in a regular or special meeting of shareholders not described in subsection 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 27. AMENDMENT. Section 10-19.1-74 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-74. Act of the shareholders.

1. The shareholders shall take action by the affirmative vote of the holders of ~~a majority of the voting power of the shares present and entitled to vote, except where this chapter or the articles require a larger proportion or number~~ the greater of:

   a. A majority of the voting power of the shares present and entitled to vote on that item of business; or

b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require a larger proportion or number.

If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

2. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series as is required pursuant to subsection 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class, the minimum percentage of the number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 10-19.1-76.

SECTION 28. AMENDMENT. Subsection 7 of section 10-19.1-79 of the North Dakota Century Code is amended and reenacted as follows:

7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under subsection 1 of section 10-19.1-93, the corporation shall not be entitled to vote the shares at a meeting or otherwise.

SECTION 29. AMENDMENT. Subsection 1 of section 10-19.1-80 of the North Dakota Century Code is amended and reenacted as follows:

1. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegraph, cablegram, or other means of electronic transmission. However, the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 30. A new subsection to section 10-19.1-80 of the North Dakota Century Code is created and enacted as follows:

If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

SECTION 31. AMENDMENT. Section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-84. Books and records - Inspection.

1. A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder. A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificates were issued.

2. A corporation shall keep at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5 originals or copies of:

   a. Records of all proceedings of shareholders for the last three years;

   b. Records of all proceedings of the board for the last three years;

   c. Its articles and all amendments currently in effect;

   d. Its bylaws and all amendments currently in effect;

   e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;

   f. Reports made to shareholders generally within the last three years;

   g. A statement of the names and usual business addresses of its directors and principal officers;

   h. Voting trust agreements described in section 10-19.1-81; ~~and~~

   i. Shareholder control agreements described in section 10-19.1-83; and

   j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 3 of section 10-19.1-61.

3. A corporation shall keep appropriate and complete financial records.

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:

   a. The share register; and

   b. All documents referred to in subsection 2.

5. A shareholder or a holder of a voting trust certificate ~~who has been a shareholder for at least six months immediately preceding the shareholder's demand or who is the holder of record of at least five percent of all the outstanding shares of the corporation~~ of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination. ~~A "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.~~

6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter 44-06, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

7. For purposes of subsections 5 and 6, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

8. On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. If a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or

examined under this subsection and subsection 9 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

9. A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under subsection 8 to any corporate record including the share register may not use, or furnish to another for use, the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.

~~7.~~ 10. Copies of the share register and all documents referred to in subsection 2, if required to be furnished under this section, must be furnished at the expense of the corporation. ~~A copy of the most recently generated share register must be furnished at the expense of the corporation if the requesting party shows a proper purpose.~~ In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

~~8.~~ 11. The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection ~~7~~ 10. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

SECTION 32. AMENDMENT. Subsections 1 and 3 of section 10-19.1-87 of the North Dakota Century Code are amended and reenacted as follows:

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

   a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:

      (1) Alters or abolishes a preferential right of the shares;

      (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;

      (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or

(4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;

b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

~~b.~~ c. A plan of merger to which the corporation is a party, except as provided in subsection 3;

~~c.~~ d. A plan of exchange ~~pursuant to which the shares of the corporation are to be acquired~~, whether under this chapter or under chapter 10-32, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to vote on the plan; or

~~d.~~ e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

3. The right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger ~~or of the acquiring corporation in an exchange, if a vote of the shareholders of the corporation is not necessary to authorize the merger or exchange~~ if the shares of the shareholder are not entitled to be voted on the merger.

SECTION 33. AMENDMENT. Section 10-19.1-88 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-88. Procedures for asserting dissenters' rights.

~~1. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of the meeting must inform each shareholder of the right to dissent and must include a copy of section 10-19.1-87 and this section.~~

~~2. The shareholder of a corporation which is a party to an action described in subsection 1 of section 10-19.1-87 shall file with the corporation, prior to or at the meeting of shareholders at which the action is submitted to a vote, a written objection to the action and may not vote in favor of the action.~~

~~3. The shareholder, within ten days after the date on which the vote was taken, shall make written demand on the corporation for payment of the fair value of the shares as of the day prior to the day on which the vote~~

~~was taken approving the action. The demand must state the number and class of shares owned by the dissenting shareholder. Any shareholder failing to make demand within the ten-day period is bound by the action.~~

~~4. If the action is effected, the corporation shall pay to the shareholder, upon surrender of the shareholder's certificate or certificates representing the shares, the fair value of the shares.~~

~~5. Within ten days after the action is effected, the corporation shall give notice of the action to each dissenting shareholder who has made demand as provided in this section.~~

~~6. If within thirty days after the date on which the action was effected, the value of the shares is agreed upon between the dissenting shareholder and the corporation, payment for the shares must be made within ninty days after the date on which the action was effected, upon the surrender of the shareholder's certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in the shares or in the corporation.~~

~~7. If within the period of thirty days the shareholder and the corporation do not agree on the value of the shares, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, bring an action in any court of competent jurisdiction asking for a finding and determination of the fair value of the shares and is entitled to judgment against the corporation for the amount of the fair value as of the day prior to the day on which the vote was taken approving the action, together with interest to the date of the judgment. The judgment is payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in these shares or in the corporation. Unless the dissenting shareholder files the petition within the time permitted the shareholder and all persons claiming under the shareholder are bound by the action.~~

1. For purposes of this section, the terms defined in this subsection have the meanings given them.

   a. "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in subsection 1 of section 10-19.1-87 or the successor by merger of that issuer.

   b. "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of a corporate action referred to in subsection 1 of section 10-19.1-87.

   c. "Interest" means interest commencing five days after the effective date of the corporate action referred to in subsection 1 of section 10-19.1-87, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.

2. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of

the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 10-19.1-87 and this section.

3. If the proposed action must be approved by the shareholders, a shareholder who wishes to exercise dissenter's rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

4. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subsection 3 and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

   a. The address to which a demand for payment and share certificates must be sent in order to obtain payment and the date by which they must be received;

   b. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

   c. A copy of section 10-19.1-87 and this section.

5. In order to receive the fair value of shares, a dissenting shareholder must demand payment and deposit certificated shares within thirty days after the notice was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

6. After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subsections 3, 4, and 5, the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:

   a. The corporation's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the corporate action, together with the latest available interim financial statements;

   b. An estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and

   c. A copy of section 10-19.1-87 and this section.

7. The corporation may withhold the remittance described in subsection 6 from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subsections 3, 4, and 5, the corporation shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept the amount in full satisfaction. The dissenter may decline the

offer and demand payment under subsection 9. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 10 and 11 apply.

8. If the corporation fails to remit within sixty days of the deposit of certificates, it shall return all deposited certificates. However, the corporation may again give notice under subsections 4 and 5 and require deposit at a later time.

9. If a dissenter believes that the amount remitted under subsections 6, 7, and 8 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares plus interest, within thirty days after the corporation mails the remittance under subsections 6, 7, and 8, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.

10. If the corporation receives a demand under subsection 9, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after a discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subsection 9 and who have not reached agreement with the corporation. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or other shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 6, 7, and 8, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subsections 6, 7, and 8 exceeds the fair value of the shares as determined by the court, plus interest.

11. The court shall determine the costs and expenses of a proceeding under subsection 10, including the reasonable expenses in compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subsection 9 is found to be arbitrary, vexatious, or not in good faith.

12. If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

13. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

SECTION 34. AMENDMENT. Subdivision d of subsection 1 of section 10-19.1-89 of the North Dakota Century Code is amended and reenacted as follows:

d. Has been approved by ~~the affirmative vote of the holders of two-thirds of the outstanding shares~~;

(1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or

(2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

SECTION 35. AMENDMENT. Subsections 1, 5, and 10 of section 10-19.1-91 of the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section, the terms defined in this subsection have the meanings given them.

a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a director, the position of director in a corporation;

(2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment ~~or agency~~ relationship undertaken by an employee ~~or agent~~ of the corporation; and

(3) With respect to a director, officer, or employee~~, or agent~~ of the corporation who, while a director, officer, or employee~~, or agent~~ of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, or ~~agent~~ employee of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, or employee, ~~or agent,~~ as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

d. "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee~~, or agent~~ whose indemnification is in issue.

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including, without limitation, monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid ~~as part of the annual financial statements furnished to shareholders pursuant to section 10-19.1-85 covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation reflected in the financial statements~~ not later than the next meeting of shareholders.

SECTION 36. A new subsection to section 10-19.1-91 of the North Dakota Century Code is created and enacted as follows:

Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

SECTION 37. AMENDMENT. Subsection 1 of section 10-19.1-93 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may acquire its own shares, subject to section 10-19.1-92. If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subsection until the pledge is released. Shares so acquired constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

SECTION 38. AMENDMENT. Section 10-19.1-96 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-96. Merger - Exchange - Transfer.

1. Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.

2. ~~The shares of one or more classes or series of a corporation may be exchanged for shares of the same or a different class or series of one or more other corporations pursuant to a plan of exchange approved in the manner provided in sections 10-19.1-97, 10-19.1-98, 10-19.1-101, 10-19.1-102, and 10-19.1-103.~~ A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant to a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and sections 10-19.1-101 through 10-19.1-103.

3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-19.1-104.

4. A corporation may participate in a merger or exchange with a domestic limited liability company pursuant to chapter 10-32. The dissenter's rights for shareholders of a corporation are governed by this chapter.

SECTION 39. AMENDMENT. Section 10-19.1-97 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-97. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

   a. The names of the corporations proposing to merge or participate in an exchange and:

      (1) In the case of a merger, the name of the surviving corporation;

      (2) In the case of an exchange, the name of the acquiring corporation;

   b. The terms and conditions of the proposed merger or exchange;

   c. ~~In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or in the case of an exchange, the manner and basis of exchanging the shares of other constituent corporations for shares of the acquiring corporation~~ With respect to the manner and basis of conversion or exchange:

      (1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation or, in whole or in part, into money or other property; or

      (2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation or any other corporation or, in whole or in part, into money or other property;

d. In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

e. Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

2. The procedure authorized by this section does not limit the power of a corporation to acquire ~~for money or property other than its shares all or part of the shares of a class or series of another corporation by a negotiated agreement with the shareholders of the other corporation~~ all or part of the shares of one or more classes or series of another corporation through a negotiated agreement with the shareholders or otherwise.

SECTION 40. AMENDMENT. Section 10-19.1-98 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-98. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and must then be submitted at a regular or special meeting to the shareholders of ~~each constituent corporation at a regular or a special meeting. Written~~:

   a. Each constituent corporation, in the case of a plan of merger; and

   b. The corporation whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange.

   If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every shareholder, whether or not entitled to vote at the meeting, no fewer than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the shareholders must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. ~~A~~ Except as provided in subsection 3, a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is ~~affected by the plan of~~ included in the exchange.

3. A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange affects a cancellation of shares of the class or series if the plan of merger or exchange affects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or

exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 10-19.1-87 in the event of the merger or exchange.

4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving ~~or acquiring~~ corporation is not required if:

   a. The articles of the corporation will not be amended in the transaction;

   b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

   c. The number of shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of shares of the corporation entitled to vote issuable on conversion ~~or exchange~~ of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than twenty percent~~, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles,~~ the number of shares of the corporation entitled to vote immediately before the transaction; and

   d. The number of participating shares of the corporation immediately after the ~~transaction~~ merger, plus the number of participating shares of the corporation issuable on conversion ~~or exchange of~~, or on the exercise of rights to purchase, securities issued in the ~~transaction~~ merger, will not exceed by more than twenty percent~~, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles,~~ the number of participating shares of the corporation immediately before the ~~transaction~~ merger. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

SECTION 41. AMENDMENT. Subsection 1 of section 10-19.1-99 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared that contain:

   a. The plan of merger; and

   b. ~~For each corporation either:~~

      ~~(1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98; or~~

      ~~(2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98~~

      A statement that the plan has been approved by each corporation pursuant to chapter 10-19.1.

SECTION 42. AMENDMENT. Section 10-19.1-100 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-100. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least ninety percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of ~~either corporation~~ itself or any subsidiary or may merge itself, or itself and one or more subsidiaries into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent present must set forth a plan of merger that contains:

   a. The name of the subsidiary or subsidiaries, ~~and~~ the name of the parent, and the name of the surviving corporation; ~~and~~

   b. The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;

   c. If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and

   d. If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger.

   If the parent is a constituent corporation but is not the surviving corporation in a merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

2. A copy of the plan of merger must be mailed to each shareholder, other than the parent and any subsidiary, of ~~the~~ each subsidiary that is a constituent corporation in the merger.

3. Articles of merger must be prepared that contain:

   a. The plan of merger;

   b. The number of outstanding shares of each class and series of the subsidiary that is a constituent corporation in the merger and the number of shares of each class and series owned by the parent directly, or indirectly through related corporations; ~~and~~

c. The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of ~~the~~ each subsidiary that is a constituent corporation in the merger; and

d. A statement that the plan of merger has been approved by the parent under this section.

4. Within thirty days after a copy of the plan of merger is mailed to shareholders of ~~the~~ each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each subsidiary that is a constituent corporation to the merger, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, along with the fees provided in chapter 10-23.

5. The secretary of state shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent corporation but is not the surviving corporation in a merger, to the surviving corporation or its legal representative. The certificate must contain the effective date of the merger.

6. If all of the stock of one or more domestic subsidiaries of the parent that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenter's rights under section 10-19.1-87, without regard to subsection 3 of section 10-19.1-87 and section 10-19.1-88. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87, if the articles of incorporation of the surviving corporation constitued an amendment to the articles of the corporation of the parent, that shareholder of the parent has dissenter's rights as provided under sections 10-19.1-87 and 10-19.1-88. Except as provided in this subsection, sections 10-19.1-87 and 10-19.1-88 do not apply to any merger affected under this section.

7. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

SECTION 43. AMENDMENT. Section 10-19.1-101 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-101. Abandonment of plan of merger or exchange.

1. After a plan of merger or exchange has been approved ~~at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation~~ by the shareholders entitled to vote on the approval of the plan as provided in section 10-19.1-98 and before the effective date of the plan, it may be abandoned:

a. If the shareholders of each of the constituent corporations ~~have considered abandoning the plan and the abandonment has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation~~ entitled to vote on the approval of the plan as provided in section 10-19.1-98 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 10-19.1-98, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;

b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

c. Pursuant to subsection 2.

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If articles of merger have been filed with the secretary of state, the board shall file with the secretary of state, together with the fees provided in chapter 10-23, articles of abandonment that contain:

a. The name of the ~~corporation~~ constituent corporations;

b. The provision of this section under which the plan is abandoned; and

c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

If the certificate of merger has been issued, the board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

SECTION 44. AMENDMENT. Subsection 1 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

1. A domestic corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if ~~the merger or exchange is permitted by the laws of the state under which the foreign corporation is incorporated~~:

a. With respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation is incorporated; and

b. With respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation is incorporated.

SECTION 45. AMENDMENT. Subsection 3 of section 10-19.1-108 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in ~~section~~ sections 10-19.1-110, 10-19.1-110.1, and 10-19.1-124.

SECTION 46. AMENDMENT. Subsection 1 of section 10-19.1-109 of the North Dakota Century Code is amended and reenacted as follows:

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

   a. To collect or make provisions for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares; ~~and~~

   b. ~~To~~ Except as provided in sections 10-19.1-100, 10-19.1-110.1, and 10-19.1-124, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and

   c. To give notice to creditors and claimants under section 10-19.1-110 or to proceed under section 10-19.1-100.1.

SECTION 47. AMENDMENT. Section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110. ~~Notice~~ Dissolution procedure for corporations that give notice to creditors and claimants.

1. When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each ~~known~~ creditor of and claimant against the corporation ~~at the last known address of each known present, future, or contingent creditor and claimant. The corporation may give published notice to known creditors or claimants whose address is unknown and to unknown present, future, or contingent creditors and claimants,~~ known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located and by giving written notice to known creditors and claimants pursuant to subsection 20 of section 10-19.1-01.

2. The notice to creditors and claimants must contain:

   a. A statement that the corporation is in the process of dissolving;

   b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;

   c. The date of filing the notice of intent to dissolve;

d. The address of the office to which written claims against the corporation must be presented; and

e. The date by which all the claims must be received, which must be the later of ninety days after ~~the notice of intent to dissolve was filed with the secretary of state~~ published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

3. With respect to claims against corporations that give notice:

a. A corporation that gives notice to creditors and claimants has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.

b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:

(1) Sixty days from the date of rejection;

(2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or

(3) Ninety days after the date on which notice was given to the creditor or claimant,

whichever is longer, to pursue any other remedies with respect to the claim.

c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-19.1-124.

d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

4. Articles of dissolution for a corporation that has given notice to creditors and claimants under this section must be filed with the secretary of state after:

a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or

arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.

5. The articles of dissolution must state:

a. The last date on which the notice was given and:

(1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for; or

(2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;

b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

SECTION 48. Section 10-19.1-110.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-110.1. Dissolution procedure for corporations that do not give notice.

1. Articles of dissolution for a corporation that have not given notice to creditors and claimants in the manner provided in section 10-19.1-110 must be filed with the secretary of state after:

a. The payment of claims of all known creditors and claimants has been made or provided for; or

b. At least two years have elapsed from the date of filing the notice of intent to dissolve.

2. The articles of dissolution must state:

a. If the articles of dissolution are being filed pursuant to subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision

has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

3. With respect to claims against corporations that do not give notice:

   a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

   b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-19.1-124.

SECTION 49. Section 10-19.1-113.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-113.1. Filing of articles of dissolution - Effective date of dissolution - Certificate.

1. An original of the articles of dissolution must be filed with the secretary of state. If the secretary of state finds that the articles of dissolution conform to law and that all fees have been paid under chapter 10-23, the secretary of state shall issue a certificate of dissolution.

2. When the certificate of dissolution has been issued by the secretary of state, the corporation is dissolved.

3. The secretary of state shall issue to the dissolved corporation, or its legal representative, a certificate of dissolution that contains:

   a. The name of the corporation;

   b. The date the articles of dissolution were filed with the secretary of state; and

   c. A statement that the corporation was dissolved.

SECTION 50. AMENDMENT. Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-115. Involuntary dissolution.

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

   a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;

   b. In an action by a shareholder when it is established that:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

(2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;

(3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) The corporate assets are being misapplied or wasted; or

(5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124.

c. In an action by a creditor when:

(1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.

2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.

3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

4. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

5. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

~~5.~~ 6. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

SECTION 51. AMENDMENT. Section 10-19.1-124 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-124. Claims barred - Exceptions.

1. ~~A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal proceeding within the time provided in section 10-19.1-111, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.~~ Except as provided in this section, a creditor or claimant whose claims are barred under section 10-19.1-110, 10-19.1-110.1, or 10-19.1-119 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

   a. Against the corporation to the extent of undistributed assets; or

   b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

3. All known contractual debts, obligations, and liabilities incurred ~~during dissolution proceedings~~ in the course of winding up the corporation's affairs shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers~~,~~ and directors~~, and shareholders~~ of the corporation ~~before the expiration of the applicable statute of limitations~~ who are responsible for, but who fail to cause the corporation to pay or make provision for, payment of the debts, obligations, and liabilities, or against shareholders to the extent permitted under section 10-19.1-94. This

subsection does not apply to dissolution under the supervision or order of a court.

SECTION 52. AMENDMENT. Section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Foreign professional association" means a professional association that is incorporated or organized under laws other than the laws of this state for purposes for which a professional association may be organized under this chapter.

2. "Professional association" or "association" means:

   a. A professional corporation that is incorporated under this chapter; or

   b. A professional limited liability company that is organized under this chapter.

3. "Professional corporation" or "corporation" means a corporation which is ~~organized~~ incorporated under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.

4. "Professional limited liability company" or "limited liability company" means a limited liability company which is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its members only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the association or nonlicensed employees as provided in section 10-31-07.2.

~~2.~~ 5. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this chapter could not be performed by a corporation or limited liability company.

SECTION 53. AMENDMENT. Section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation. One or more individuals may incorporate a professional association in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. Such articles of incorporation shall meet the requirements of ~~the Business Corporation Act~~ chapter 10-19.1 and, in addition thereto, contain the following:

1. The profession to be practiced through the professional corporation.

2. The names and residence addresses of all of the original shareholders, directors, and officers of the professional corporation.

At the time such articles of incorporation are filed with the secretary of state, there shall also be filed a certificate by the regulating board of the profession involved that each of the directors and shareholders of voting ~~stock~~ shares, if any, is duly licensed to practice such profession.

SECTION 54. Section 10-31-02.1 of the North Dakota Century Code is created and enacted as follows:

10-31-02.1. Articles of organization. Two or more individuals may organize a professional association in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. Such articles of organization shall meet the requirements of chapter 10-32, and, in addition thereto, contain the following:

1. The profession to be practiced through the professional limited liability company;

2. The names and residence addresses of all of the original members, governors, and managers of the professional limited liability company.

At the time such articles of organization are filed with the secretary of state, there shall also be filed a certificate by the regulating board of the profession involved that each of the governors and members, if any, is duly licensed to practice such profession.

SECTION 55. AMENDMENT. Section 10-31-03 of the North Dakota Century Code is amended and reenacted as follows:

10-31-03. Applicability of North Dakota **Business Corporation Act.** The North Dakota Business Corporation Act shall be applicable to professional associations which are organized in the form of corporations and ~~they~~ which shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter shall take precedence in the event of any conflict with the provisions of the North Dakota Business Corporation Act.

SECTION 56. Section 10-31-03.1 of the North Dakota Century Code is created and enacted as follows:

10-31-03.1. Applicablity of North Dakota Limited Liability Company Act. The North Dakota Limited Liability Company Act shall be applicable to professional associations which are organized in the form of a limited liability company and which shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other limited liability companies except where inconsistent with the letter and purpose of this chapter. This chapter shall take precedence in the event of any conflict with the provisions of the North Dakota Limited Liability Company Act.

SECTION 57. AMENDMENT. Section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which incorporated or organized. A professional ~~corporation~~ association may be incorporated or organized pursuant to the provisions of this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other

than rendering the professional service for which it was incorporated or organized to render~~; provided, however, that~~. However, a professional ~~corporation~~ association may own real and personal property necessary or appropriate for rendering the type of professional services it was incorporated or organized to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment. This statute shall not preclude ~~a corporation~~ an association incorporated or organized pursuant to the provisions of chapter 10-31 from rendering more than one specific type of professional service if the services rendered are such as are set forth in chapters 43-03 and 43-19.1.

SECTION 58. AMENDMENT. Section 10-31-05 of the North Dakota Century Code is amended and reenacted as follows:

10-31-05. ~~Corporate name~~ Name.

1. The ~~corporate~~ name of a ~~corporation~~ professional association:

   a. In the form of a corporation organized under this chapter shall contain the word "chartered", "limited" or the abbreviation "Ltd.", or "professional corporation" or the abbreviation "P.C.".

   b. In the form of a limited liability company organized under this chapter shall contain the word "professional limited liability company", or the abbreviation "P.L.C.".

2. The use of the word "company", "corporation", ~~or~~ "incorporated", "limited liability company", or any other word, abbreviation, affix, or prefix indicating that it is a corporation~~,~~ or limited liability company in the ~~corporate~~ name of ~~a corporation~~ an association incorporated or organized under this chapter, other than the ~~word "chartered", "limited", or "professional corporation" or the abbreviations "Ltd." or "P.C."~~ words and abbreviations set forth in subsection 1, is specifically prohibited.

SECTION 59. AMENDMENT. Section 10-31-06 of the North Dakota Century Code is amended and reenacted as follows:

10-31-06. Officers, directors, ~~and~~ shareholders, managers, governors, and members.

1. No person may be simultaneously a director ~~or~~, shareholder, governor, or member of more than one professional ~~corporation~~ association.

2. A professional association in the form of a corporation which has only one shareholder need have only one director, who shall be such shareholder. ~~He~~ That person shall also serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president. ~~A professional corporation which has only two shareholders need have only two directors, who shall be such shareholders. The two shareholders shall fill all of the general offices of the corporation between them.~~

3. A retired person may not continue as a director, officer, ~~or~~ shareholder, governor, manager, or member of a professional corporation.

SECTION 60. AMENDMENT. Section 10-31-07 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07. Issuance and transfer of shares. A professional association in the form of a corporation may issue ~~the~~ its shares ~~of its capital stock~~ only to persons who are duly licensed to render the same specific professional services as those for which the corporation was ~~organized~~ incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to the corporation or a person owning or eligible to own the same type of ~~stock~~ shares as the person making the transfer. Any shares issued in violation of this section are null and void. The voluntary transfer of any shares transferred in violation of this section is null and void. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same specific professional services as those for which the corporation was organized.

SECTION 61. AMENDMENT. Section 10-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.1. Retirement plan trust - Voting and nonvoting stock. A professional corporation may establish a retirement plan trust which allows the corporation to contribute nonvoting shares ~~of its common stock~~ for nonlicensed employees and voting shares ~~of its common stock~~ for licensed employees.

SECTION 62. Section 10-31-07.2 of the North Dakota Century Code is created and enacted as follows:

10-31-07.2. Issuance and transfer of membership interests. A professional association in the form of a limited liability company may issue membership interests only to persons who are duly licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to the professional limited liability company or a person owning or eligible to own a membership interest. Any membership interests issued in violation of this section are null and void. The voluntary transfer of any membership interests transferred in violation of this section is null and void. No membership interests may be transferred upon the books of the professional limited liability company or issued by the professional limited liability company until there is presented to and filed with the limited liability company a certificate by the regulating board stating that the person to whom the transfer is to be made or the membership interests issued is duly licensed to render the same specific professional services as those for which the limited liability company was organized.

SECTION 63. AMENDMENT. Section 10-31-08 of the North Dakota Century Code is amended and reenacted as follows:

10-31-08. Professional services through officers, managers, employees, agents. No ~~corporation~~ association organized ~~and~~ or incorporated under this chapter may render professional services except through its officers, managers, employees, and agents who are duly licensed to render such professional services in this state~~; provided, however, that~~. However, this provision shall not be

interpreted to include in the term "employee", as used herein, clerks, secretaries, bookkeepers, nurses, technicians, or other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required in connection with the profession practiced by a particular professional ~~corporation~~ association.

SECTION 64. AMENDMENT. Section 10-31-09 of the North Dakota Century Code is amended and reenacted as follows:

10-31-09. Professional relationship preserved - Liability of shareholders and members **- Professional regulation.** This chapter does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving such service, including liability arising out of such professional service, and including the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any, and all confidential relationships previously enjoyed under the laws of this state or hereinafter enacted shall remain inviolate. Subject to the foregoing provisions, nothing contained herein shall render a director, officer, shareholder, governor, manager, member, or employee of a professional ~~corporation~~ association personally liable in tort for any act in which ~~he~~ that person has not personally participated or in contract for any contract which ~~he~~ that person executes on behalf of a professional ~~corporation~~ association within the limits of ~~his~~ that person's authority. Nothing in this chapter shall restrict or limit in any manner the authority and duty of the regulating boards for the licensing of individual persons rendering professional services. No professional ~~corporation~~ association may do any act which is prohibited to be done by any individual person licensed to practice the profession which the professional ~~corporation~~ association is incorporated or organized to render.

SECTION 65. AMENDMENT. Section 10-31-10 of the North Dakota Century Code is amended and reenacted as follows:

10-31-10. Legal disqualification. If any officer, director, ~~or~~ shareholder, manager, governor, or member of a professional ~~corporation~~ association becomes legally disqualified to render a professional service within this state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, ~~he~~ that person shall sever all employment with or financial interest in such professional ~~corporation~~ association forthwith. A professional ~~corporation's~~ association's failure to comply or require compliance with this provision shall be a ground for the forfeiture of its right to render professional service as a professional ~~corporation~~ association pursuant to the provisions of this chapter.

SECTION 66. AMENDMENT. Section 10-31-11 of the North Dakota Century Code is amended and reenacted as follows:

10-31-11. Disposition of shares on death or disqualification.

1. With respect to a professional association in the form of a corporation:

   a. The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of such shareholder, or the same may be provided for in the bylaws or by private agreement. In the absence of a provision

for the same in the articles of incorporation or the bylaws or by private agreement, the ~~professional~~ corporation shall have an option to purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within six months after the death or disqualification of the shareholder, as the case may be.

b. The option price for such shares shall be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder unless otherwise specified in the articles of incorporation, bylaws, or by private agreement. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by such corporation.

c. In the event the ~~professional~~ corporation fails to exercise such option, the ~~stock~~ shares of the deceased or disqualified shareholder may be sold to any person duly licensed or otherwise legally authorized to render the same professional service as that for which the ~~professional~~ corporation was organized.

d. A disqualified shareholder, or the estate of a deceased shareholder, may continue to hold shares of the ~~professional~~ corporation during said option period and for a reasonable period thereafter, pending transfer to another duly licensed or otherwise legally authorized person, but shall not be authorized to participate in any decisions concerning the performance of professional service.

2. With respect to a professional association in the form of a limited liability company:

a. The articles of organization may provide for the purchase or redemption of the membership interest of any member upon the death or disqualification of such member, or the same may be provided for in the operating agreement or member-control agreement. In the absence of a provision for the same in the articles of organization, the operating agreement or member-control agreement, the limited liability company shall have an option to purchase the membership interest of a deceased member or a member no longer qualified to own a membership interest in such limited liability company within six months after the death or disqualification of the member, as the case may be.

b. The option price for such membership interest shall be the book value as of the end of the month immediately preceding the death or disqualification of the member unless otherwise specified in the articles of organization, operating agreement, or member-control agreement. Book value shall be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by such limited liability company.

c. In the event the limited liability company fails to exercise such option, the membership interest of the deceased or disqualified member may be sold to any person duly licensed or otherwise legally

authorized to render the same professional service as that for which the limited liability company was organized.

d. A disqualified member, or the estate of a deceased member, may continue to hold membership interests of the limited liability company during said option period and for a reasonable period thereafter, pending transfer to another duly licensed or otherwise legally authorized person, but shall not be authorized to participate in any decisions concerning the performance of professional service.

SECTION 67. AMENDMENT. Section 10-31-12 of the North Dakota Century Code is amended and reenacted as follows:

10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.

1. In the event of the death of the last or only shareholder of a professional corporation whose shares ~~of stock~~ pass to heirs by intestate succession, to ~~legatees~~ devisees under a last will and testament, or otherwise pass by operation of law to a person or persons not legally qualified to render the professional services which the professional corporation was organized to perform, the heirs, ~~legatees~~ devisees, or personal representative of such deceased shareholder, within six months after the date of death of such last or only shareholder, may amend the articles of incorporation to provide that such corporation shall continue as a general corporation under the North Dakota Business Corporation Act.

2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, ~~legatees~~ devisees, or personal representative to make such amendment within six months after such death shall be a ground for the involuntary dissolution of the professional corporation.

3. When notified of such facts ~~are brought to the attention of~~, the secretary of state ~~he~~ shall forthwith certify such facts to the attorney general who shall immediately take appropriate action to dissolve the professional corporation.

SECTION 68. AMENDMENT. Section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Annual reports.

1. With respect to a professional association in the form of a corporation:

   a. Each ~~professional~~ corporation ~~organized~~ incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of such reports by the North Dakota Business Corporation Act giving the name and residence addresses of all officers, directors, and shareholders of such ~~professional~~ corporation as of the thirtieth day of June next preceding the filing of such report.

   b. Attached to this report shall be a form certifying that all of such directors and shareholders of voting ~~stock~~ shares are duly licensed

to render the same specific professional services as those for which the corporation was organized. This certificate shall be made on such form as shall be prescribed and furnished by the secretary of state, shall be signed by the president or vice president and attested by the secretary or assistant secretary of the ~~professional~~ corporation, and sworn to before a notary public by the persons executing the certificate and accompanied by a filing fee of twenty dollars payable to the secretary of state. No other fees shall be charged therefor.

c. A ~~duplicate original~~ copy of such certificate shall be filed at the same time with the regulatory board which licenses the shareholders described in the certificate and no filing fee shall be charged by the regulatory board for such filing.

d. The regulatory boards issuing the licenses described in section 10-31-01 are hereby authorized and directed to issue the certificates required by section 10-31-02. Such certificates shall be on forms as prescribed and furnished by the secretary of state. The regulatory boards may charge and collect a fee not to exceed twenty dollars per person so certified to be duly licensed by such regulating board.

2. With respect to a professional association in the form of a limited liability company:

a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of such reports by the North Dakota Limited Liability Company Act giving the name and residence address of all managers, governors, and members of such association as of the thirtieth day of June next preceding the filing of such report.

b. Attached to this report shall be a form certifying that all such governors and members holding voting membership interests are duly licensed to render the same specific professional services as those for which the limited liability company was organized. This certificate shall be made on such form as shall be prescribed and furnished by the secretary of state, shall be signed by the president and attested by the secretary of the limited liability company, and sworn before a notary public by the persons executing the certificate and accompanied by a filing fee of fifty dollars payable to the secretary of state. No other fees shall be charged therefor.

c. A copy of such certificate shall be filed at the same time with the regulatory board which licenses the members described in the certificate and no filing fee shall be charged by the regulatory board for such filing.

d. The regulatory boards issuing the licenses described in section 10-31-01 are authorized and directed to issue the certificates required by section 10-31-02. Such certificates shall be on forms prescribed and furnished by the secretary of state. The regulatory boards may charge and collect a fee not to exceed twenty dollars per person so certified to be duly licensed by the regulatory board.

SECTION 69. AMENDMENT. Section 10-31-13.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13.1. Foreign professional ~~corporations~~ associations - Practice in North Dakota.

1. A foreign professional ~~corporation~~ association may practice a profession in this state only through shareholders, directors, officers, members, governors, managers, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional ~~corporation~~ association apply to a foreign professional ~~corporation~~ association.

2. The certificate of authority of a foreign professional ~~corporation~~ association may be revoked by the secretary of state as provided for in this chapter, if the foreign professional ~~corporation~~ association fails to comply with any provisions of this chapter.

3. This chapter shall not be construed to prohibit the practice of a profession in this state by an individual who is a shareholder, director, officer, member, governor, manager, employee, or agent of a foreign professional ~~corporation~~ association, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional ~~corporation~~ association.

4. This ~~provision~~ section shall apply regardless of whether or not the foreign professional ~~corporation~~ association is authorized to practice a profession in this state.

SECTION 70. AMENDMENT. Section 10-31-14 of the North Dakota Century Code is amended and reenacted as follows:

10-31-14. Citation - Construction. This chapter shall be known and may be cited as the North Dakota Professional ~~Corporation~~ Association Act, and shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate form and the benefits of the limited liability company form.

SECTION 71. AMENDMENT. Section 12.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-03-02. Corporate and limited liability company criminal responsibility.

1. A corporation or a limited liability company may be convicted of:

   a. Any offense committed by an agent of the corporation or limited liability company within the scope of ~~his~~ the agent's employment on the basis of conduct authorized, requested, or commanded, by any of the following or a combination of them:

      (1) The board of directors or the board of governors.

      (2) An executive officer, executive manager, or any other agent in a position of comparable authority with respect to the formulation of ~~corporate~~ policy or the supervision in a managerial capacity of subordinate employees.

(3) Any person, whether or not an officer of the corporation, who controls the corporation or is responsibly involved in forming its policy.

(4) Any person, whether or not a manager of the limited liability company, who controls the limited liability company or is responsibly involved in forming its policy.

(5) Any other person for whose act or omission the statute defining the offense provides corporate or limited liability company responsibility for offenses.

b. Any offense consisting of an omission to discharge a specific duty of affirmative conduct imposed on a corporation or a limited liability company by law.

c. Any misdemeanor committed by an agent of the corporation or the limited liability company within the scope of ~~his~~ the agent's employment.

d. Any offense for which an individual may be convicted without proof of culpability, committed by an agent of the corporation or the limited liability company within the scope of ~~his~~ the agent's employment.

2. It is no defense that an individual upon whose conduct liability of the corporation or the limited liability company for an offense is based has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

SECTION 72. AMENDMENT. Section 13-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-01. Definitions. As used in this chapter:

1. "Affiliate" means:

a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole discretionary power to vote the securities or solely to secure a debt, if the person has not exercised the power to vote;

b. A corporation or a limited liability company twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole power to vote the securities or solely to secure a debt, if the person has not in fact exercised the power to vote;

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

2. "Asset" means property of a debtor, excluding property to the extent it is encumbered by a valid lien, property to the extent it is generally exempt under nonbankruptcy law, or an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

3. "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

4. "Creditor" means a person who has a claim.

5. "Debt" means liability on a claim.

6. "Debtor" means a person who is liable on a claim.

7. "Insider" means:

a. If the debtor is an individual, an "insider" includes a relative of the debtor or of a general partner of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, ~~or~~ a corporation of which the debtor is a director, officer, or person in control, or a limited liability company of which the debtor is a governor, manager, or person in control.

b. If the debtor is a corporation, an "insider" includes a director of the debtor, an officer of the debtor, a person in control of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a relative of a general partner, director, officer, or person in control of the debtor.

c. If the debtor is a partnership, an "insider" includes a general partner in the debtor, a relative of a general partner in, of a general partner of, or of a person in control of the debtor, another partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a person in control of the debtor.

d. If the debtor is a limited liability company, an "insider" includes a governor of the debtor, a manager of the debtor, a person in control of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner or a relative of a general partner, governor, manager, or person in control of the debtor.

e. An "insider" also includes an affiliate, or an insider of an affiliate as if the affiliate were the debtor, and a managing agent of the debtor.

8. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien, a common-law lien, or a statutory lien.

9. "Person" means an individual, partnership, corporation, limited liability company, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

10. "Property" means anything that may be the subject of ownership.

11. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

12. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

13. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal process or proceedings.

SECTION 73. AMENDMENT. Section 13-03-06 of the North Dakota Century Code is amended and reenacted as follows:

13-03-06. Posting of license - Continuing license - Annual fee.

1. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.

2. Each license remains in full force and effect until surrendered, revoked, or suspended, provided that on or before the tenth day of June of each year the licensee shall pay to the commissioner of banking and financial institutions the sum of one hundred dollars for each license held by him, as a license fee for the succeeding fiscal year, and at the same time he shall file with the commissioner a bond in the same amount and in the same character as is required by subdivision c of subsection 2 of section 13-03-05.

SECTION 74. AMENDMENT. Section 13-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-07. Posting of license - Continuing license - Annual fee.

1. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.

2. Each license must remain in full force and effect until surrendered, revoked, or suspended; provided, that on or before the tenth day of June of each year the licensee shall pay to the administrator the sum of one hundred dollars for each license held by him, as a license fee for the succeeding fiscal year.

SECTION 75. AMENDMENT. Section 13-05-03 of the North Dakota Century Code is amended and reenacted as follows:

13-05-03. Application for collection agency license. Every application for collection agency license, or for a renewal thereof, must be made upon blanks furnished by the department of banking and financial institutions and must contain the following information:

1. The full name and proposed business name of the applicant.

2. The address where the business is to be conducted.

3. The names and addresses of the applicant and those associated with him. If the applicant is a corporation, the application must contain the names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability company.

4. Such additional information which the department of banking and financial institutions shall require.

SECTION 76. AMENDMENT. Section 15-09-01 of the North Dakota Century Code is amended and reenacted as follows:

15-09-01. Public lands - Application to acquire for public or quasi-public purpose. The state of North Dakota or any person, firm, limited liability company, or public or private corporation, desiring to acquire any school or institution lands of the state for:

1. Townsite purposes;

2. Schoolhouse sites;

3. Church sites;

4. Cemetery sites;

5. Sites for other educational or charitable institutions;

6. Sites for public parks;

7. Sites for fairgrounds;

8. Public highway purposes;

9. Fish hatcheries;

10. Airports;

11. Railroad right of way or other railroad uses and purposes;

12. Reservoirs for the storage of water for irrigation;

13. Drainage ditches;

14. Irrigation ditches; or

15. Any of the other purposes for which the right of eminent domain may be exercised under the constitution and laws of the state,

may make written application to the board of university and school lands therefor. Such application shall state briefly the purposes for which the land is required, describe the land as accurately as practicable, and shall be accompanied by a map showing the land desired. The application shall be verified by the applicant, or, if the applicant is a public or private corporation, by some officer thereof, or, if the applicant is a limited liability company, by some manager thereof, or, if the applicant is the state of North Dakota, by an officer of the commission, board, or department desiring to acquire the land.

SECTION 77. AMENDMENT. Subdivision b of subsection 1 of section 21-11-02 of the North Dakota Century Code is amended and reenacted as follows:

b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person ~~or~~, corporation, or limited liability company owns part or all of the stock of the applicant or limited liability companies organized under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, limited liability company, or corporation owns part or all of the membership interests of the applicant, or is engaged in a partnership or joint enterprise with the applicant.

SECTION 78. AMENDMENT. Subsection 2 of section 26.1-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner shall issue or renew a license if the commissioner finds that the person to be licensed:

   a. Is competent and trustworthy and intends to act in good faith in the financing of insurance premiums;

   b. Has a good business reputation and has had experience, training, or education qualifying the person to finance insurance premiums; and

   c. If a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state or if a limited liability company, is organized under the laws of this

state or is a foreign limited liability company authorized to transact business in this state.

SECTION 79. AMENDMENT. Subdivision a of subsection 4 of section 26.1-31.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. The commissioner may issue a reinsurance intermediary license to any person, firm, association, ~~or~~ corporation, or limited liability company who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons must be named in the application and any supplements thereto. Any such license issued to a corporation must authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements thereto. Any such license issued to a limited liability company must authorize all of the managers and any designated employees and governors thereof to act as reinsurance intermediaries on behalf of the limited liability company, and all such persons must be named in the application and any supplements thereto.

SECTION 80. AMENDMENT. Section 26.1-33-35 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-35. Insurance in favor of corporation or limited liability company **on life of corporate officer or employee** or limited liability company manager or employee **- Powers of corporation** or limited liability company. Whenever a domestic corporation or limited liability company causes to be insured the life of any director, officer, agent, or employee of the corporation or on the life of any governor, manager, agent, or employee of the limited liability company, or whenever a domestic corporation or limited liability company is named as a beneficiary in or assignee of any life insurance policy, due authority to effect, assign, release, relinquish, convert, or surrender, or to change the beneficiary in, the policy, or to take any other or different action with reference to, the insurance, is sufficiently evidenced to the insurance company by a written statement to that effect signed by the president and the secretary or other corresponding officers of the corporation or limited liability company. The statement is binding upon the corporation or limited liability company and protects the insurance company in any act done or suffered by it upon the faith of the notice without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person may be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of the corporation on any corporate act touching the insurance or from acting as a governor or as a member of the executive committee of the limited liability company or any limited liability company act touching the insurance.

SECTION 81. AMENDMENT. Subsection 4 of section 28-21-08 of the North Dakota Century Code is amended and reenacted as follows:

4. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy under an execution with the person holding the property or~~, if~~:

   a. If the property consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier, or managing agent thereof.

   b. If the property consists of membership interests in a limited liability company or interest or profits thereon, with the president or other head of the limited liability company or the secretary, treasurer, or managing agent thereof.

SECTION 82. AMENDMENT. Section 28-25-10 of the North Dakota Century Code is amended and reenacted as follows:

28-25-10. Answers on oath - Referee reports to court. All examinations and answers before a judge or referee under this chapter must be on oath, except that when a corporation answers, the answer must be on the oath of an officer ~~thereof~~ of the corporation and that when a limited liability company answers, the answer must be on the oath of a manager of the limited liability company. If the examination is before a referee, it must be taken by ~~him~~ the referee and certified to the judge appointing ~~him~~ who appointed the referee.

SECTION 83. AMENDMENT. Subsection 1 of section 30.1-29-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The court may appoint an individual, ~~or a~~ limited liability company, association, corporation, or other entity with general power to serve as trustee, as conservator of the estate of a protected person.

SECTION 84. AMENDMENT. Section 34-09-06 of the North Dakota Century Code is amended and reenacted as follows:

34-09-06. Contracts between union and employer. Any contract entered into between the employer and a labor union must be executed on behalf of the employer in his or its true name and signed by the employer, or in case of a corporation by the proper officers authorized by law and the bylaws of such corporation to execute valid and binding contracts on behalf of the corporation, or in the case of a limited liability company by the proper managers authorized by law and the operating agreement of such limited liability company to execute valid and binding contracts on behalf of the limited liability company, and any such contract must be executed on behalf of the labor union in the name of the labor union by the president or secretary or other duly authorized officer of such labor union. Such contract is equally binding as to all its terms and conditions against both the employer and the labor union.

SECTION 85. AMENDMENT. Section 34-13-03 of the North Dakota Century Code is amended and reenacted as follows:

34-13-03. License application - Schedule of fees - License issuance and revocation. On or before July first of each year, every applicant for a license shall file with the commissioner a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building

in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application must also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license, and must be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation, and must be signed and sworn to by the president and treasurer thereof. If the applicant is a limited liability company, the application must state the names and addresses of the managers and governors of the limited liability company and must be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application must also state the names and addresses of all partners therein, and must be signed and sworn to by all of them. The application must also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by anyone engaged in, the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application must also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commissioner a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commissioner. It is unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commissioner.

It is the duty of the commissioner, and he has the power, jurisdiction, and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, he finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent are found upon investigation to be unfit for such use. Any such license granted by the commissioner may also be revoked by him upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the commissioner is deemed due cause to revoke such license.

SECTION 86. AMENDMENT. Subsection 1 of section 36-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before entering into a business of a kind described in this chapter and annually, on or before July first, each dealer shall file an application for a license to transact such business with the department on a form prescribed by it. The application must show:

   a. The nature of the business for which a license is desired and whether it is for the business of buying livestock or wool, or for both such businesses.

b. The name or names of the persons applying for the license.

c. The full name of each member thereof if the applicant is a firm, association, or partnership, ~~or~~ the names of the officers thereof if the applicant is a corporation, or the names of the managers thereof if the applicant is a limited liability company.

d. The name of the agent or agents of the applicant.

e. The post-office address and the principal place of business of the applicant.

f. If the applicant is a foreign corporation, its principal place of business without this state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations.

g. If the applicant is a foreign limited liability company, its principal place of business without this state, the name of the state in which it is organized, and that it has complied with the laws of this state relating to foreign limited liability companies.

h. Such other facts as the department may prescribe.

SECTION 87. A new subdivision to subsection 1 of section 39-30-05 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Ordering the surrender of the certificate of organization of a limited liability company organized under the laws of the state or the revocation of a certificate authorizing a foreign limited liability company to conduct business within the state upon finding that the board of governors or a managerial agent acting on behalf of the limited liability company, in conducting the affairs of the limited liability company, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires that the certificate of organization of the limited liability company be surrendered and the limited liability company dissolved or the certificate revoked.

[2] **SECTION 88. AMENDMENT.** Subsection 5 of section 43-15-35 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The applicant for such permit is qualified to conduct the pharmacy, and is a registered pharmacist in good standing or is a partnership, each active member of which is a registered pharmacist in good standing, ~~or~~ a corporation or association, the majority stock in which is owned by registered pharmacists in good standing, or a limited liability company, the majority membership interests in which is owned by registered pharmacists in good standing, actively and regularly employed in and

[2] NOTE: Section 43-15-35 was also amended by section 31 of Senate Bill No. 2213, chapter 422.

responsible for the management, supervision, and operation of such pharmacy.

SECTION 89. A new subsection to section 45-10.1-26 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

In the case of a general partner that is a limited liability company, the filing of articles of termination, or its equivalent, for the limited liability company or the revocation of its certificate of organization.

SECTION 90. AMENDMENT. Subsection 2 of section 47-19-14.5 of the North Dakota Century Code is amended and reenacted as follows:

2. That, in the case of:

   a. A corporation, the officer or agent acknowledged ~~that he held~~ holding the position or title set forth in the instrument and certificate; ~~that he signed~~ signing the instrument on behalf of the corporation by proper authority; and that the instrument was the act of the corporation;

   b. A limited liability company, the manager or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the limited liability company by proper authority; and that the instrument was the act of the limited liability company;

   c. A partnership, the partner or agent acknowledged ~~that he signed~~ signing the instrument on behalf of the partnership by proper authority and that the instrument was the act of the partnership;

   ~~c.~~ d. A person acknowledging as attorney in fact for a principal, ~~that he signed~~ signing the instrument by proper authority as the act of the principal;

   ~~d.~~ e. A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, ~~that he signed~~ signing the instrument by proper authority and in the capacity stated in the instrument; and

SECTION 91. AMENDMENT. Section 47-19-14.6 of the North Dakota Century Code is amended and reenacted as follows:

47-19-14.6. Short forms of acknowledgment. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law or regulation of this state. The forms shall be known as the "statutory short forms of acknowledgment", and may be referred to by that name. The authorization of the forms provided in this section does not preclude the use of other forms:

1. For an individual acting in his own right:
   State of _____
   County of _____

   The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

2. For a corporation:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent and title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

3. For a limited liability company:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of manager or agent and title of manager or agent) of (name of limited liability company acknowledging), a (state or place of organization) limited liability company, on behalf of the limited liability company.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

4. For a partnership:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent), on behalf of (name of partnership), a partnership.
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

~~4.~~ 5. For an individual acting as attorney in fact for a principal:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

~~5.~~ 6. For a public officer, trustee, guardian, personal representative, or other representative:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).
(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

SECTION 92. Section 47-19-28.1 of the North Dakota Century Code is created and enacted as follows:

47-19-28.1. Certificate of acknowledgment executed by a limited liability company. The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of)

On this day of , in the year before me (here insert the name and quality of the manager), personally appeared , known to me (or proved to me on oath of) to be the president (or other manager or person) of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

SECTION 93. A new subsection to section 51-17-06 of the North Dakota Century Code is created and enacted as follows:

The limited liability company and each manager and governor thereof, if the applicant is a limited liability company.

SECTION 94. AMENDMENT. Subdivision a of subsection 17 of section 52-01-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date, and subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by:

(1) Any officer of a corporation. If a corporate officer is employed by a corporation in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the officer or by the officer's parent, child, or spouse, or by any combination of them, the corporation with the concurrence of the officer may exclude that officer's service from employment as of the first day of January of any calendar year if, during January of that year, the corporation files a written application to exclude the officer's service from employment.

(2) Any manager of a limited liability company. If a limited liability company manager is employed by the limited liability company in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calender year if, during January

of that year, the limited liability company files a written application to exclude the manager's service from employment.

(3) Any individual who, under the provisions of subdivision e, has the status of an employee.

~~(3)~~ (4) Any individual other than an individual who is an employee under ~~paragraph~~ paragraphs 1 ~~or~~, 2, or 3 who performs services for remuneration for any person:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for ~~his~~ the person's principal.

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, ~~his~~ the person's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of this paragraph, the term "employment" includes services described in either subparagraph a or b performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

SECTION 95. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

SECTION 96. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is

personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

SECTION 97. AMENDMENT. Subsection 4 of section 57-40.3-07 of the North Dakota Century Code is amended and reenacted as follows:

4. For vehicles which have been previously licensed and are transferred between a member of a general or limited partnership and the partnership at the time the partnership is established or terminated, ~~or~~ between a stockholder of a corporation and the corporation at the time the corporation is organized or liquidated, or between a member of a limited liability company and the limited liability company at the time the limited liability company is organized or terminated.

SECTION 98. AMENDMENT. Subsection 1 of section 57-43.1-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. To procure a license as a dealer in motor vehicle fuel, an applicant shall file with the commissioner an application upon a form prescribed and furnished by the commissioner. Such application must contain:

   a. The name under which the applicant intends to transact business.

   b. If a partnership, the name and address of each of the several persons constituting the firm.

   c. If a domestic corporation, the corporate name, the date of incorporation, and the names of the directors and corporate officers.

   d. If a foreign corporation, the corporate name, the state where and the time when incorporated, the name of the resident agent, the location of each place of business, and the date on which the business was established.

   e. If a domestic limited liability company, the limited liability company name, the date of formation, and the names of the governors and managers.

   f. If a foreign limited liability company, the limited liability company name, the state where and the time when formed, the name of the resident agent, the location of each place of business, and the date on which the business was established.

   g. Any other information the commissioner may require. The application must be signed and verified by the owner of the business, if an individual, partnership, or unincorporated association, ~~and~~ by any authorized officer, if a corporation, and by any authorized manager, if a limited liability company.

SECTION 99. AMENDMENT. Section 57-43.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-16. Report by dealer to commissioner. Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render

to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner, a statement of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a domestic limited liabilty company, the statement must be signed by the president or treasurer, and if a foreign limited liability company, by the resident agent, president, or treasurer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.

SECTION 100. A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

SECTION 101. AMENDMENT. Subsection 8 of section 57-43.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Person" includes every natural person, fiduciary, association, ~~or~~ corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, ~~and~~ as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.

SECTION 102. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 103. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders. The commission may install, and whenever requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, ~~or~~ corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The commission on its own motion may, or on request of the required percentage of partners, stockholders, or members, the commission shall, send a competent examiner to examine the books and financial accounts of such elevator or warehouse. Whenever a request for the examination of the accounts of any association, copartnership, ~~or~~ corporation, or limited liability company has been made to the commission, as provided for in this section, an examination thereafter shall be made at least once every year until the commission shall be requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. When such examination has been made, the examiner shall report immediately the results thereof to the president and the secretary of such association, copartnership, ~~or~~ corporation, or limited liability company and to the commission.

SECTION 104. Section 61-13-03.1 of the North Dakota Century Code is created and enacted as follows:

61-13-03.1. Articles of organization or operating agreement may restrict sales to members - When membership interest to become appurtenant to land - Sale of water to others. Any limited liability company organized for irrigation purposes may provide in its articles of organization or operating agreement that water shall be sold, distributed, supplied, or delivered only to owners of its membership interests and that such membership interests shall be appurtenant to the land described in the document evidencing such membership interests. When a copy of such articles of organization or operating agreement is recorded in the office of the register of deeds of the county in which such lands are situated, such membership interests shall become appurtenant to said lands and shall be transferred only with the sale or transfer of such lands, except in the event of sale or forfeiture of such membership interests for delinquent assessments thereon as provided in section 61-13-04. Notwithstanding such provision in its articles of organization or operating agreement, any limited liability company organized for irrigation purposes may sell water to an irrigation district, this state, or any department or agency thereof, and to the United States, or any department or agency thereof, at the same rates as to holders of membership interests of such limited liability company. In the event lands to which any such membership interest is appurtenant are acquired by the state, the United States, or any department or agency thereof, such membership interest shall be canceled by the limited liability company, which shall be reissued to any persons subsequently acquiring title to such land.

[3] **SECTION 105. AMENDMENT.** Subsection 15 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[3] NOTE: Subsection 15 of section 65-01-02 was also amended by section 1 of Senate Bill No. 2396, chapter 615.

15. "Employer" means:

a. The state and all political subdivisions thereof.

b. All public and quasi-public corporations in this state.

c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.

d. The legal representative of any deceased employer.

e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation, having one or more employees as herein defined.

f. The president, vice presidents, secretary, or treasurer of a business corporation.

g. The managers of a limited liability company.

* **SECTION 106.** Statutory references to harmonize provisions relating to corporations and partnerships with the provisions of this Act relating to limited liability companies.

1. The legislative council may insert appropriate references in the sections of law listed in this section, consistent with usages contained in this bill. References inserted may be adjusted to suit the context and grammar of the sections listed in this section and must be inserted so as to harmonize existing law with regard to partnerships and corporations with the powers, documents, officers and employees, rights, and duties of a limited liability company. The following are examples of references contained in existing law and the reference that may be inserted with relation to that reference:

a. "Limited liability company" may be inserted with regard to laws that apply to a "corporation".

b. "Articles of organization" may be inserted in relation to references to "articles of incorporation" of a corporation.

c. "Manager" or "governor" of a limited liability company may be inserted in relation to references to a corporate "officer" or "director".

d. "Membership interests" of a limited liability company may be inserted in relation to references to "capital stock" of a corporation.

e. Appropriate references to limited liability companies may be inserted in relation to references to "domestic", "foreign", "professional", "professional service", "parent", or similar references describing a corporation.

f. "Member in a limited liability company" may be inserted in relation to references to a "partner in a partnership".

g. "Operating agreement" may be inserted in relation to references to "bylaws" of a corporation.

h. "Organized" may be inserted in relation to references to "incorporated" regarding a corporation.

i. References to "chapter 10-32" may be inserted in relation to references to incorporation under "chapter 10-22".

j. "Members" may be inserted in relation to references to "stockholders".

k. "President" may be inserted in relation to "principal executive officer", or similar terms regarding corporations.

l. "Limited liability company" may be inserted in relation to references in tax laws to "partnership".

m. References to appropriate sections of chapter 10-06.1 may be substituted for references to sections of chapter 10-06.

n. Other appropriate changes, including deletions of existing statutory language, may be made when appropriate and in harmony with the apparent intent of this bill.

2. The sections of the North Dakota Century Code to which the authority of subsection 1 applies are sections 1-01-45, 1-02-29, 1-04-02, 1-08-08, 2-03-11, 2-04-01, 2-06-01, 2-08-01, 2-08-03, 2-08-04, 4-01-17.1, 4-02-02, 4-02.1-03, 4-02.1-12, 4-09-01, 4-10-01, 4-10.1-03, 4-10.1-08, 4-10.1-09, 4-10.2-02, 4-10.2-08, 4-10.3-02, 4-10.3-08, 4-10.4-01, 4-10.5-01, 4-10.5-07, 4-10.6-07, 4-11-01, 4-12.1-01, 4-13.2-06, 4-14-01, 4-14-05, 4-14-09, 4-18.1-03, 4-21.1-01, 4-22-02, 4-23-01, 4-25-01, 4-27-03, 4-28-02, 4-28-06, 4-30-01, 4-30-15, 4-30-22, 4-30-26, 4-30-45, 4-32-01, 4-33-01, 4-34-02, 4-35-05, 4-35-12, 4-36-12, 5-04-01, 6-01-02, 6-03-38, 6-06-06, 6-08-08.1, 6-08.1-01, 6-09.2-03, 6-09.8-01, 6-09.10-01, 6-09.11-01, 6-09.13-01, 6-09.14-01, 6-10-01, 6-10-07, 7-01-02, 9-14-01, 10-04-02, 10-04-05, 10-04-06, 10-04-07, 10-04-08, 10-04-08.1, 10-04-10, 10-04-10.1, 10-04-11, 10-12-02, 10-13-01, 10-13-03, 10-15-33, 10-18.1-01, 10-18.1-08, 10-19.1-02, 10-19.1-03, 10-22-03, 10-24-05, 10-24-39, 10-30-04, 10-30-12, 10-30.1-01, 10-30.1-06, 10-30.2-01, 10-30.2-11, 10-30.2-12, 10-30.2-14, 10-30.3-01, 10-30.3-02, 10-30.3-05, 10-30.4-01, 10-30.4-05, 11-11-14, 11-18-01, 11-18-16, 11-18-20, 11-21-01, 11-22-05, 11-28-05, 11-28-16, 11-33.2-15, 12.1-01-04, 12.1-03-04, 12.1-06.1-01, 12.1-23-10, 12.1-27.1-01, 12.1-27.2-04.2, 13-03-01, 13-03.1-01, 13-06-01, 14-02.4-02, 14-09-09.10, 14-10.1-01, 14-10.2-01, 14-15-01, 15-10-17, 15-11-27, 15-11-29, 15-12-25, 15-20.4-01, 15-29-08, 15-43-01, 15-43-02, 15-43-03, 15-43-05, 15-52-08, 15-54-03, 15-54-05, 15-55-02.1, 15-59.3-02, 15-60-08, 15-67-04, 16.1-08-01, 16.1-08-02, 16.1-08-04, 16.1-08.1-01, 18-08-10, 19-01-01, 19-02.1-01, 19-02.1-05, 19-02.1-10, 19-03.1-01, 19-06.1-01, 19-08-02, 19-08-05, 19-13.1-02, 19-16.1-02, 19-16.1-10, 19-17-01, 19-18-02, 19-21-01, 19-22-02, 19-22.1-01, 20.1-01-02, 20.1-06-10, 20.1-06-11, 20.1-06-13, 20.1-07-02, 21-10-02, 23-09.3-01, 23-09.3-05, 23-09.3-11, 23-10-01, 23-12-04, 23-13-01, 23-13-02.1, 23-13-08, 23-15-01, 23-15.1-02, 23-16-01, 23-16-12, 23-17-01, 23-17-02, 23-17-03, 23-17.1-01, 23-17.1-02, 23-17.1-07, 23-17.2-02, 23-17.2-09, 23-17.3-01, 23-18.2-11, 23-19-01, 23-20.1-01, 23-20.2-02, 23-20.2-09, 23-20.3-02, 23-21-01, 23-21-17, 23-21-20, 23-21-21, 23-21-22, 23-21.1-07, 23-21.1-10, 23-25-01, 23-26-08, 23-29-03, 24-01-01.1, 24-01-12, 24-01-39,

24-03-06, 24-07-17, 24-09-12, 26.1-06-02, 26.1-06.1-27, 26.1-10-10.1, 26.1-11-06, 26.1-11-11, 26.1-11-18, 26.1-12-02, 26.1-12-15, 26.1-12-27, 26.1-14-04, 26.1-14-11, 26.1-15.1-05, 26.1-15.1-08, 26.1-15.1-34, 26.1-17-05, 26.1-18-03, 26.1-18-07, 26.1-18-23, 26.1-19-04, 26.1-21-16, 26.1-26-02, 26.1-26-04, 26.1-26-08, 26.1-26-13, 26.1-26-24, 26.1-26-26, 26.1-26-31, 26.1-26-38, 26.1-26-41, 26.1-26-43, 26.1-26.2-01, 26.1-26.3-01, 26.1-26.3-02, 26.1-26.3-03, 26.1-27-01, 26.1-29-09.1, 26.1-31.1-01, 26.1-31.1-02, 26.1-31.1-05, 26.1-31.1-08, 26.1-34-10, 26.1-35-05, 26.1-38.1-02, 26.1-38.1-07, 26.1-42-08, 26.1-46-01, 27-02-24, 27-08.1-01, 27-10-05, 27-11-24, 28-04-04, 28-20-15, 28-21-08, 28-22-13, 28-22-15, 28-25-07, 28-25-14, 28-26-23, 28-32-01, 29-12-13, 29-12-14, 29-15-21, 30.1-01-06, 30.1-18-13, 30.1-18-15, 30.1-20-16, 30.1-23-01, 30.1-29-22, 30.1-29-24, 30.1-31-03, 30.1-32-05, 32-03-39, 32-06-08, 32-08.1-03, 32-08.1-08, 32-09.1-01, 32-09.1-09, 32-10-01, 32-13-03, 32-14-07, 32-15-01, 32-15-04, 32-15-35, 32-17-07, 32-21-01, 32-23-13, 32-26-01, 32-40-03, 32-41-01, 34-01-12, 34-06-01, 34-06.1-02, 34-07-01, 34-07-02, 34-07-03, 34-07-04, 34-07-05, 34-08-04, 34-12-01, 34-13-01, 34-13-06, 34-13-09, 34-14-01, 35-01-28, 35-18-02, 35-18-03, 35-18-05, 35-18-09, 35-19-01, 35-24-01, 35-27-01, 35-29-02, 36-04-01, 36-05-03, 36-07-01, 36-14-15, 36-21-18, 37-10-03.2, 37-16-02, 37-17.1-18, 37-17.1-21, 37-24-07, 38-01-10, 38-08-02, 38-08-09.13, 38-08-19, 38-08.1-01, 38-12-01, 38-12.1-03, 38-14.1-02, 38-14.1-14, 38-14.1-32, 38-14.2-02, 38-14.2-04, 38-15-02, 38-16-01, 38-16-03, 39-01-01, 39-05-17.1, 39-13-08, 39-18-01, 39-22-02, 39-22.1-01, 39-22.3-01, 39-24-01, 39-25-01, 39-30-01, 40-05-01, 40-05-02.2, 40-05-05, 40-05.1-06, 40-05.1-13, 40-22.1-14, 40-23-23, 40-33-01, 40-33-03, 40-33-13, 40-33-15, 40-33-16, 40-33-17, 40-33.2-02, 40-34-05, 40-34-10, 40-34-15, 40-36-02, 40-40-20, 40-50.1-05, 40-57.1-02, 40-57.2-01, 40-57.3-03, 40-58-01.1, 40-60-01, 40-60-02, 40-61-03, 41-01-11, 41-03-05, 41-03-10, 41-03-29, 41-03-80, 41-03-81, 41-06-03, 41-08-02, 41-09-41, 42-04-01, 43-01-09, 43-01-10, 43-01-10.1, 43-01-12, 43-01-13, 43-01-15, 43-01-16, 43-02.1-08, 43-02.1-09, 43-04-11, 43-04-15, 43-04-27, 43-07-01, 43-07-10, 43-07-19, 43-07-20, 43-09-09, 43-09-12, 43-09-21, 43-10.1-01, 43-11-18, 43-12.1-06, 43-13-28, 43-15-01, 43-15-34, 43-17-31, 43-18-10, 43-18-11, 43-18.1-04, 43-18.2-03, 43-19.1-27, 43-19.1-29, 43-23-05, 43-23-06.1, 43-23-07, 43-23-12, 43-23-13, 43-23.1-02, 43-23.1-06, 43-23.1-08, 43-23.3-15, 43-26-12, 43-26-13, 43-28-01, 43-29-07, 43-30-12, 43-31-01, 43-35-11, 43-35-18, 43-36-24, 44-09-17.2, 45-05-01, 45-10.1-01, 45-10.1-02, 45-10.1-04, 45-10.1-22, 45-10.1-46, 45-10.1-52, 45-11-01, 46-05-06, 46-06-03, 47-10-05.1, 47-10-23, 47-10.1-02, 47-10.1-04, 47-10.1-05, 47-11-14, 47-11-15, 47-14-09, 47-16-38, 47-19-03, 47-19-20, 47-19-33, 47-19-34, 47-22-01, 47-22-02, 47-22-03, 47-22-04, 47-24.1-01, 47-25-03, 47-25.1-01, 47-30.1-01, 49-01-01, 49-02-02, 49-02-22, 49-03-01.5, 49-03-02, 49-03.1-02, 49-03.1-05, 49-03.1-08, 49-04-06, 49-04-07, 49-04-19, 49-05-10, 49-05-14, 49-06-05, 49-07-06, 49-09-14, 49-09-16, 49-18-01, 49-18-02, 49-19-09, 49-20-09, 49-21-14, 49-22-03, 50-11-01, 50-11-06.6, 50-11.1-03, 50-11.1-13, 50-12-01, 50-12-14.1, 50-12-16, 50-19-02, 50-19-03, 50-22-01, 50-22-02.1, 51-04-01, 51-04-06, 51-05.1-04, 51-06-02, 51-07-01, 51-07-01.1, 51-07-03, 51-08.1-01, 51-09-01, 51-09-04, 51-09-05, 51-09-06, 51-10-01, 51-12-01, 51-12-14, 51-13-01, 51-15-01, 51-15-06, 51-17-02, 51-18-01, 51-19-02, 51-19-04, 51-19-06, 51-19-12, 51-19-15, 51-20-01, 51-20.1-01, 51-20.2-01, 51-22-01, 51-23-02, 51-23-08, 52-01-01, 52-04-06.1, 52-04-11.1, 52-06-04, 53-02-01, 53-03-01, 53-04-01,

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[4] **SECTION 107. REPEAL.** Chapter 10-06, sections 10-19.1-49, 10-19.1-111, and 10-19.1-113 of the North Dakota Century Code are repealed.

SECTION 108. EFFECTIVE DATE. This Act becomes effective August 1, 1993, if Senate Bill No. 2222 as approved by the Fifty-third Legislative Assembly becomes effective on or before that date.

Approved April 12, 1993
Filed April 12, 1993

[4] NOTE: Section 10-06-04.3 was also amended by section 2 of House Bill No. 1400, chapter 80.

* NOTE: SECTION 106 was affected as follows:

Section 4-10.1-09 was also amended by section 1 of House Bill No. 1203, chapter 51.

Section 4-10.2-08 was also amended by section 2 of House Bill No. 1203, chapter 51.

Section 4-10.3-08 was also amended by section 3 of House Bill No. 1203, chapter 51.

Section 4-30-01 was also amended by section 1 of House Bill No. 1182, chapter 57.

Section 4-30-15 was also amended by section 11 of House Bill No. 1182, chapter 57.

Section 4-30-45 was also repealed by section 36 of House Bill No. 1182, chapter 57.

Section 4-35-12 was also amended by section 1 of Senate Bill No. 2139, chapter 59.

Section 6-01-02 was also amended by section 1 of House Bill No. 1175, chapter 66 and by section 1 of Senate Bill No. 2227, chapter 67.

Section 6-03-38 was also amended by section 1 of Senate Bill No. 2449, chapter 72.

Section 6-08-08.1 was also amended by section 1 of House Bill No. 1152, chapter 77.

Section 10-30.1-01 was also amended by section 6 of Senate Bill No. 2021, chapter 42.

Section 10-30.4-01 was also amended by section 10 of Senate Bill No. 2021, chapter 42.

Section 12.1-23-10 was also amended by section 1 of House Bill No. 1345, chapter 123.

Section 15-12-25 was also amended by section 14 of Senate Bill No. 2021, chapter 42.

Section 15-20.4-01 was also amended by section 8 of House Bill No. 1156, chapter 62.

Section 15-59.3-02 was also amended by section 13 of House Bill No. 1183, chapter 205.

Section 15-60-08 was also repealed by section 11 of House Bill No. 1193, chapter 186.

Section 16.1-08-02 was also amended by section 1 of Senate Bill No. 2443, chapter 211 and by section 1 of Senate Bill No. 2470, chapter 212.

Section 23-09.3-01 was also amended by section 1 of House Bill No. 1031, chapter 256.

Section 23-16-01 was also amended by section 1 of Senate Bill No. 2164, chapter 262.

Section 23-17.2-02 was also amended by sections 10 and 11 of House Bill No. 1002, chapter 2.

Section 23-25-01 was also amended by section 1 of House Bill No. 1116, chapter 265.

Section 23-29-03 was also amended by section 3 of House Bill No. 1057, chapter 111.

Section 26.1-17-05 was also amended by section 2 of Senate Bill No. 2456, chapter 290.

Section 26.1-26-08 was also amended by section 2 of House Bill No. 1167, chapter 287.

Section 26.1-26.3-01 was also amended by section 19 of Senate Bill No. 2231, chapter 292.

Section 26.1-26.3-03 was also amended by section 21 of Senate Bill No. 2231, chapter 292.

Section 26.1-31.1-01 was also amended by section 25 of Senate Bill No. 2231, chapter 292.

Section 26.1-38.1-02 was also amended by section 1 of House Bill No. 1511, chapter 312.

Section 27-10-05 was also amended by section 32 of House Bill No. 1077, chapter 89.

Section 34-06-01 was also amended by section 1 of Senate Bill No. 2097, chapter 348.

Section 34-07-01 was also amended by section 1 of House Bill No. 1436, chapter 351.

Section 34-07-02 was also amended by section 2 of House Bill No. 1436, chapter 351.

Section 34-07-03 was also amended by section 3 of House Bill No. 1436, chapter 351.

Section 34-07-05 was also amended by section 4 of House Bill No. 1436, chapter 351.

Section 38-12.1-03 was also amended by section 1 of House Bill No. 1112, chapter 369.

Section 38-14.2-04 was also amended by section 2 of Senate Bill No. 2193, chapter 373.

Section 43-01-10 was also amended by section 1 of Senate Bill No. 2415, chapter 415.

Section 43-07-10 was also amended by section 2 of Senate Bill No. 2474, chapter 418.

Section 43-18-10 was also amended by section 2 of Senate Bill No. 2082, chapter 430.

Section 43-18-11 was also amended by section 3 of Senate Bill No. 2082, chapter 430.

Section 43-23-13 was also amended by section 1 of Senate Bill No. 2073, chapter 433.

Section 45-10.1-52 was also amended by section 3 of House Bill No. 1509, chapter 445.

Section 45-11-01 was also amended by section 17 of House Bill No. 1211, chapter 75.

Section 47-22-03 was also amended by section 1 of House Bill No. 1507, chapter 452.

Section 49-02-02 was also amended by section 29 of House Bill No. 1001, chapter 1.

Section 49-22-03 was also amended by section 5 of Senate Bill No. 2458, chapter 341.

Section 50-11-01 was also amended by section 3 of House Bill No. 1179, chapter 472.

Section 50-11-06.6 was also amended by section 20 of House Bill No. 1179, chapter 472.

Section 52-06-04 was also amended by section 1 of Senate Bill No. 2108, chapter 496.

Section 53-06.1-01 was also amended by section 1 of House Bill No. 1416, chapter 499.

Section 54-05.1-03 was also amended by section 18 of House Bill No. 1211, chapter 75.

Section 54-52-25 was repealed effective June 29, 1993, by section 13 of 1989 Senate Bill No. 2030, chapter 667 of the 1989 Session Laws.

Section 57-36-32 was also amended by section 5 of House Bill No. 1516, chapter 501.

Section 60-07-01 was also amended by section 1 of House Bill No. 1162, chapter 588.

Section 63-01.1-02 was also amended by section 1 of Senate Bill No. 2523, chapter 610.

CHAPTER 55

SENATE BILL NO. 2320
(Senators Bowman, Andrist, Kinnoin)
(Representatives Skarphol, Wanzek)

BEES

AN ACT to create and enact two new sections to chapter 4-12.2 of the North Dakota Century Code, relating to Africanized honeybees; to amend and reenact section 4-12.2-01, subsection 2 of section 4-12.2-04, sections 4-12.2-06, 4-12.2-07, 4-12.2-16, 4-12.2-18, 4-12.2-20, 4-12.2-21, and 4-12.2-23 of the North Dakota Century Code, relating to beekeeping; to repeal sections 4-12.2-03, 4-12.2-17, and 4-12.2-19 of the North Dakota Century Code, relating to the issuance of emergency orders and rules regarding beekeeping, the maintenance of bees in movable frames, and the sale or exposure of infected bees and equipment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Apiary" means any place where one or more colonies of bees are kept.

2. ~~"Apparently disease free" means being within accepted tolerance levels as established by rule.~~

~~3.~~ "Beekeeper" means any person who owns and maintains or leases and maintains one or more colonies of bees and maintains the bees in this state.

~~4.~~ 3. "Bees" means honey producing insects of the genus Apis, including all life stages of such insects. The term is not limited to the common ~~honey bee~~ honeybee but includes Africanized bees.

4. "Certificate of health" means a certificate issued upon the request of a beekeeper to verify normal standards of health set by the destination state.

5. "Certified breeder queen" means a queen bee whose progeny can be certified as being European by use of the fast Africanized bee identification system, the universal system for the detection of Africanized honeybees, or any other identification procedure approved by the animal and plant health inspection service.

6. "Certified production queen" means a queen bee with larvae obtained from a certified breeder queen. The term includes the queen emerging from a certified queen cell.

7. "Certified queen cell" means a cell containing the immature stage from a certified breeder queen.

~~5.~~ 8. "Colony" means the hive and its equipment including bees, comb and honey, and brood.

~~6.~~ 9. "Commissioner" means the commissioner of agriculture, or the commissioner's authorized representative.

~~7.~~ 10. "Department" means the department of agriculture.

~~8. "Disease" means American foulbrood or European foulbrood, sacbrood, bee paralysis, or any disease, parasite, or pest that affects bees or brood.~~

~~9.~~ 11. "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives.

12. "Normal standards of health" include the percentages of American foulbrood and varroasis incidents.

~~10.~~ 13. "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land.

SECTION 2. AMENDMENT. Subsection 2 of section 4-12.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Each application for license must include the applicant's name, address, and telephone number, the total number of colonies to be maintained in this state, ~~the name of the owner of the bees,~~ and the name and address of all persons, other than the applicant, who are responsible for maintaining the bees within the state. The application must be signed by the applicant~~, the owner of the bees,~~ and all persons responsible for maintaining the bees within this state. If the applicant does not own the bees, the application must disclose the nature of the relationship between the owner and the applicant. ~~If the applicant is leasing the bees from the owner, a copy of the lease agreement must be submitted with the application.~~

SECTION 3. AMENDMENT. Section 4-12.2-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-06. ~~Prevention of disease —~~ Assessment of fees. In addition to the license fee required by section 4-12.2-05, an applicant for a license must submit ~~thirty~~ fifteen cents per colony for each colony maintained in this state.

SECTION 4. AMENDMENT. Section 4-12.2-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall ~~apply for registration of~~ register all apiaries that are or will be maintained by the beekeeper within the state at the same time an application for license is made. The application forms for registration must be furnished by the department. The applicant shall provide the following information on the form provided:

a. The location of each apiary to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.

b. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the written lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The written lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.

~~c. Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.~~

2. New apiaries may be ~~submitted for registration~~ registered with the department at any time.

~~3. A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.~~

SECTION 5. AMENDMENT. Section 4-12.2-16 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-16. Bee inspector - Duties - Powers.

~~1. The bee inspector shall inspect apiaries, bees, and equipment within this state as required by this chapter.~~

~~2. Any apiary, bees, and equipment may be inspected for the purpose of ascertaining the existence of any disease, for the treatment or destruction of such disease of bees or brood, or for the purpose of enforcing this chapter.~~

~~3. The inspector or any deputy inspector may enter upon private property during reasonable hours for the purpose of inspection. Access may not be denied or hindered by any person while the inspector or the inspector's deputy is acting in an official capacity.~~

~~4. The beekeeper shall follow the instruction and supervision of the inspector or deputy inspector for the treatment, control, and eradication of any disease found in or on an apiary, equipment, or bees.~~

~~5. If the beekeeper does not comply with the instructions given by the inspector or the deputy inspector, the inspector may cause the specified treatment to be applied or, if necessary, may cause the infected colonies to be destroyed. A beekeeper may not recover damages or compensation for the loss of any diseased colonies or equipment destroyed or damaged pursuant to this chapter or any rules adopted pursuant to this chapter.~~

~~6. After the inspection or handling of any diseased apiary, bees, equipment, or building, the inspector or deputy inspector shall take those measures which are necessary to prevent the spread of any bee disease.~~ Upon request, the bee inspector shall provide inspection services to beekeepers, provide assistance in the location of bee colonies for pollination purposes, facilitate the interstate movement of bees, promote

improvements in apicultural practices, and work with institutions of higher education to promote the apiary industry. If the bee inspector or a deputy inspector receives a complaint from a beekeeper, aerial sprayer, or farmer, the inspector may enter private property during reasonable hours to make an external inspection for the purpose of identifying a colony.

SECTION 6. AMENDMENT. Section 4-12.2-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-18. Certificate of health - Issuance. If a certificate of health is required for the interstate movement of bees and equipment, the ~~beekeeper shall request the~~ state bee inspector ~~to~~ shall make an official inspection for that purpose~~. If the inspector finds that the bees and equipment are apparently disease free, and if all fees and civil or criminal penalties have been paid, the state bee inspector shall~~ and issue a certificate of health. If for any reason an additional inspection is required prior to the issuance of a certificate of health, the beekeeper shall submit to the commissioner a fee set by the commissioner to cover the costs of the additional inspection.

SECTION 7. A new section to chapter 4-12.2 of the North Dakota Century Code is created and enacted as follows:

Africanized honeybees - Regulated areas. If a swarm of bees is captured, positively identified as being Africanized honeybees, and determined to be present as a result of natural migration, rather than human intervention, the commissioner may designate a limited geographic area as an Africanized honeybee area. The commissioner shall allow beekeepers to transport managed colonies out of the Africanized honeybee area for a period of three months from the date of designation. Thereafter, the commissioner shall allow managed colonies to be transported out of the designated area only if the queens were marked or clipped prior to the date of designation, or if the colonies have been requeened with certified breeder queens, certified production queens, or certified queen cells. A beekeeper may not use a swarm of honeybees positively identified as being Africanized in a beekeeping operation.

SECTION 8. A new section to chapter 4-12.2 of the North Dakota Century Code is created and enacted as follows:

Africanized honeybees. The department in cooperation with the North Dakota beekeeper's association shall develop a voluntary certification plan consistent with the model state Africanized honeybee management plan developed at the United States department of agriculture and national association of state departments of agriculture meeting in St. Louis, Missouri, in October 1991.

SECTION 9. AMENDMENT. Section 4-12.2-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-20. Shipment into state - Permit - Fees. Before any person transports any bees or used equipment into this state, that person must obtain an entrance permit from the bee inspector. ~~The applicant for an entrance permit shall:~~

~~1. Possess a North Dakota certificate of health issued within the past twelve months for all colonies for which an entrance permit is requested, or obtain a certificate of health from the state bee inspector or from an~~

~~equivalent official in another state or country, certifying that the bees and equipment have been inspected within the last ninety days and have been found to be apparently disease free;~~

~~2. Submit a complete description of the shipment; and~~

~~3. Submit any other information required by rule.~~

Entrance permits for applicants whose applications are received after March first are effective sixty days after the date of the application for a license. ~~For purposes of the 1991 season, the due date for license applications is May first.~~ Immediately upon the arrival in this state of any bees or equipment, the beekeeper shall comply with this chapter. Upon showing of good cause, the commissioner may on a case-by-case basis waive the sixty-day waiting period.

SECTION 10. AMENDMENT. Section 4-12.2-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-21. Abandoned apiary and abandoned equipment - Seizure, destruction, or sale. Any apiary, equipment, or bees not regularly maintained and attended in accordance with this chapter or any rules adopted pursuant to this chapter or which comprises a hazard or threat to ~~disease control in~~ the beekeeping industry may be considered abandoned and will be subject to seizure by the state bee inspector. Any bees not properly hived, or hives or equipment not properly stored~~, so as to prevent possible spread of disease~~ may be considered abandoned bees or equipment. Any ~~diseased~~ bees and equipment which have been seized may, when necessary, be immediately burned or otherwise destroyed and any bees or equipment not destroyed may be sold at public auction. The proceeds, after the cost of sale and all costs resulting from the action are deducted, must be returned to the former owner or the former owner's estate; provided, however, that before causing the bees or equipment to be sold, the bee inspector shall give the beekeeper or agent a written notice at least five days prior to the date on which the property will be sold. This notice is to be given by registered mail or by personal service upon the owner, or person in charge, of such property.

SECTION 11. AMENDMENT. Section 4-12.2-23 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-23. Confiscation and disposal. Any bees or equipment found to be transported or maintained in violation of the beekeeping laws of this chapter may be confiscated by the state bee inspector or the sheriff of any county where the offense may have occurred and must be disposed of pursuant to court order or an administrative order issued by the commissioner after a hearing held under chapter 28-32, unless the bees or equipment are disposed of under section 4-12.2-21 ~~or subsection 5 of section 4-12.2-16~~.

SECTION 12. REPEAL. Section 4-12.2-17 of the North Dakota Century Code and sections 4-12.2-03 and 4-12.2-19 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 56

SENATE BILL NO. 2414
(Senators Nelson, Tallackson)
(Representative Belter)

NORTHERN CROPS INSTITUTE AND COUNCIL

AN ACT to amend and reenact section 4-14.2-01 and subsection 1 of section 4-14.2-02 of the North Dakota Century Code, relating to the northern crops institute and the northern crops council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4-14.2-01. Northern crops institute - Establishment - Director.

1. A northern crops institute is ~~hereby~~ established to be administered by and in conjunction with North Dakota state university.

2. A director must be appointed by the ~~university~~ northern crops council in consultation with the ~~northern crops council~~ president of North Dakota state university. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations, prepare a biennial budget, and serve as executive secretary to the northern crops council. The ~~university~~ council shall fix the salary of the director, within the limits of legislative appropriations, and may remove the director for cause in consultation with the ~~council~~ president of North Dakota state university.

3. The council shall provide the president of North Dakota state university with an opportunity to participate in the hiring of a director for the institute, including serving on search committees, advertising, interviewing candidates, and negotiating with potential candidates.

SECTION 2. AMENDMENT. Subsection 1 of section 4-14.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The northern crops council is ~~hereby~~ established. The council shall establish policies for the operation of the northern crops institute. The council consists of:

   a. The president of North Dakota state university of agriculture and applied science or the president's designee.

   b. A ~~member of~~ representative selected by the North Dakota wheat commission ~~selected by that commission~~.

   c. A ~~member of~~ representative selected by the North Dakota oilseed council ~~selected by that council~~.

d. A ~~member of~~ representative selected by the North Dakota barley council ~~selected by that council~~.

e. A ~~member of~~ representative selected by the North Dakota soybean council ~~selected by that council~~.

f. The commissioner of agriculture or the commissioner's designee.

g. Four to five producers of northern crops selected by the members designated in subdivisions a through f.

h. Up to two representatives of industries ~~which~~ that process northern crops selected by the members designated in subdivisions a through f.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 57

HOUSE BILL NO. 1182
(Agriculture Committee)
(At the request of the Commissioner of Agriculture)

DAIRY PRODUCTS LAWS

AN ACT to create and enact four new sections to chapter 4-30 of the North Dakota Century Code, relating to complaint investigation under dairy products laws, inspections, the grade A pasteurized milk ordinance, and labeling standards; to amend and reenact sections 4-30-01, 4-30-02, 4-30-03.9, 4-30-05, 4-30-06, 4-30-09, 4-30-10, 4-30-11, 4-30-12, 4-30-15, 4-30-23, 4-30-24, 4-30-27, 4-30-28, 4-30-29, 4-30-30, 4-30-31, 4-30-32, 4-30-33, 4-30-34, 4-30-35, 4-30-36, 4-30-37, 4-30-38, 4-30-39, 4-30-42, 4-30-48, 4-30-49, 4-30-52, and 4-30-53 of the North Dakota Century Code, relating to dairy products laws; to repeal chapter 4-29, sections 4-30-06.1, 4-30-13, 4-30-14, 4-30-16, 4-30-17, 4-30-41.1, 4-30-45, and 4-30-51 of the North Dakota Century Code, relating to the dairy department, personal notice to file claims, complaints upon violation, place of hearing, witness subpoenas, court review, prohibitions against sales of imitation milk and filled dairy products, labeling of milk and milk products for retail sale and complaint investigation; to provide penalties; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **4-30-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Adulterated milk or adulterated milk products" means any milk or cream to which water has been added, or any milk or milk product which contains any unwholesome substance, or any other inhibitors, or which, if defined by state law or by the rules of the dairy department, does not conform with its definition.~~

2. ~~"Agent" means a person authorized to act on behalf of another person in dealing with a third person.~~

3. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the ~~dairy commissioner~~ department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the ~~dairy~~ department.

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[1] NOTE: Section 4-30-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~4. "Butter" means that product usually known by that name which is manufactured exclusively from milk, cream, or both, with or without common salt, with or without additional coloring matter.~~

~~5. "Buttermilk" means a fluid product resulting from the churning of milk or cream.~~

~~6. "C.I.P." means a method of cleaning, commonly called "cleaned-in-place" whereby equipment is cleaned by circulating washing solutions and sanitizers through it and thereby eliminating the necessity of dismantling the equipment.~~

~~7. "Canned milk" means milk sealed in metal cans for sale to consumers. It is commonly a sweetened, condensed and sterile fluid or evaporated milk.~~

~~8. "Cheese" means that product which is usually known by that name which is the sound, solid and ripened product of milk and cream made by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.~~

~~9.~~ 2. "Cheese factory" means a place where cheese is made for commercial purposes.

~~10. "Commercial carrier" means a person or business which is subject to regulation by state or federal authorities.~~

~~11.~~ 3. "Commissioner" means the ~~dairy~~ commissioner of agriculture or the commissioner's designee.

~~12.~~ 4. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.

~~13. "Concentrated milk" means a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk. When recombined with water, in accordance with instructions printed on the container, the resulting product conforms with the standards for milkfat and solids not fat of milk.~~

~~14. "Concentrated milk products" means and includes homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, concentrated flavored milk, concentrated flavored drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be, and which, when recombined with water in accordance with instructions printed on the container, conform with the standards of the corresponding milk products.~~

~~15. "Condensed milk or evaporated milk" means milk which has been concentrated by removing water with or without the addition of sugar.~~

~~16.~~ 5. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.

~~17. "Cottage cheese" means the soft uncured cheese prepared from the curd obtained by adding harmless, lactic acid producing bacteria, with or without enzymatic action, to pasteurized skim milk or pasteurized reconstituted skim milk.~~

~~18. "Cream" means the fatty liquid or semiliquid separated from milk, with or without the addition thereto of milk or skim milk.~~

~~19.~~ 6. "Cream station" means any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.

~~20. "Creamed cottage cheese" means the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk.~~

~~21.~~ 7. "Creamery" means a place where butter is made for commercial purposes.

~~22. "Cultured buttermilk" means a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted skim milk.~~

~~23. "Cultured milk" means a fluid or semifluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized milk, pasteurized reconstituted milk, or pasteurized concentrated milk.~~

~~24.~~ 8. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.

~~25.~~ 9. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.

~~26.~~ 10. "Department" means the ~~dairy~~ department of agriculture.

~~27.~~ 11. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.

~~28. "Dry buttermilk powder or dry buttermilk" means buttermilk dehydrated to dryness.~~

~~29. "Dry milk products or powdered milk products" means milk or milk products dehydrated by evaporation.~~

~~30.~~ 12. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.

~~31.~~ 13. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed

cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall not be construed to mean or include:

a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or

c. Oleomargarine.

~~32. "Flavored drink or flavored dairy drink" means a beverage or confection consisting of skim milk to which has been added a syrup or flavor made from wholesome ingredients.~~

~~33. "Flavored milk" means a beverage or confection consisting of milk to which has been added a syrup or flavor made from wholesome ingredients.~~

~~34. "Flavored reconstituted drink or flavored reconstituted dairy drink" means a flavored drink made from reconstituted skim milk.~~

~~35. "Flavored reconstituted milk" means a flavored milk made from reconstituted milk.~~

~~36. "Fortified milk and milk products" means milk to which has been added vitamins or minerals in an approved method.~~

~~37. "Frozen milk" means milk which has been processed by freezing.~~

~~38.~~ 14. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.

~~39. "Half and half" means a product consisting of a mixture of milk and cream.~~

~~40. "Homogenized milk" means milk which has been treated in such a manner as to ensure breakup of the fat globules to such an extent that, after forty-eight hours of quiescent storage, no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" must be interpreted to include homogenized milk.~~

~~41. "Ice cream" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or~~

~~vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients.~~

~~42. "Ice cream and ice milk mix" means and includes any frozen, or unfrozen substance, mixture, or compound which is not ice cream, milk sherbet, ice, or frozen or frosted malted milk as the same are defined by the department, regardless of the name under which it is sold or offered for sale:~~

~~a. If the freezing of such substance, mixture, or compound is accompanied by agitation of the ingredients thereof;~~

~~b. If such substance, mixture, or compound is made in imitation or semblance of ice cream;~~

~~c. If such substance, mixture, or compound is prepared or frozen in the same manner as ice cream is customarily prepared or frozen.~~

~~43. "Ice cream mix" means the mix from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer.~~

~~44.~~ 15. "Ice cream plant" means a place where ice cream is made for commercial purposes.

~~45.~~ 16. "Ice milk plant" means a place where ice milk is made for commercial purposes.

~~46.~~ 17. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:

a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.

b. The packaging used resembles the packaging used for milk or for a milk product.

c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.

d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to

flavor, texture, smell, and appearance of a food product or food compound.

~~47. "Instant dry powder or instant dry milk" means milk dehydrated to dryness and which dissolves "instantly" when reconstituted.~~

~~48. "Milk" means the lacteal secretion, free from colostrum, obtained by the complete milking of one or more healthy dairy animals.~~

~~49.~~ 18. "Milk or cream hauler" means a person~~, business, or corporation that~~ who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.

~~50.~~ 19. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.

~~51. "Milk producer" means a person who owns or controls one or more dairy animals, a part or all of the milk or milk products from which is sold, or offered for sale.~~

~~52. "Milk products or dairy products" means and includes cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, low fat skim milk, nonfat milk, flavored milk, flavored drink, flavored reconstituted milk, flavored reconstituted drink, buttermilk, cultured buttermilk, cultured milk, vitamin D milk, fortified milk, reconstituted or recombined milk, reconstituted cream, reconstituted skim milk, cottage cheese, creamed cottage cheese, butter, ice cream, ice milk, cheese, unsweetened condensed milk, sweetened condensed milk, evaporated milk, dry buttermilk, dry whole milk, dry skim milk, and any other product made by the addition of any substance to milk or to any of these milk products, and used for similar purposes, and designated as a milk product by the dairy commissioner.~~

~~53.~~ 20. "Milk solids or total solids" means the total amount of solids in milk.

~~54. "Misbranded milk or misbranded milk products" means any milk or milk product which carries a grade label, unless such grade label has been awarded by the dairy commissioner and not revoked, or which fails to conform in any other respect with the statements on the label.~~

~~55. "Nonfat, fat-free, or defatted milk" means skim milk which contains not more than fifteen hundredths of one percent milkfat.~~

~~56.~~ 21. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.

~~57.~~ 22. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44

degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.

~~58.~~ 23. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.

~~59.~~ 24. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices, or arrangements.

~~60.~~ 25. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.

~~61.~~ 26. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.

~~62.~~ 27. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.

~~63.~~ 28. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.

~~64.~~ 29. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.

~~65. "Reconstituted or recombined cream" means a product which results from the combination of dry cream, butter, or milkfat, with cream, milk, skim milk, or water, and which complies with the milkfat standards of cream.~~

~~66. "Reconstituted, or recombined, half and half" means a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream.~~

~~67. "Reconstituted or recombined milk" means a product which results from the recombining of milk constituents with water, and which complies with the standards for milkfat and solids not fat of milk.~~

~~68. "Reconstituted or recombined skim milk" means a product which results from the recombining of skim milk constituents with water.~~

~~69.~~ 30. "Retail" means the sale of milk or milk products directly to the consumer.

~~70.~~ 31. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.

~~71.~~ 32. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.

~~72. "Skim milk or low fat milk" means milk from which a portion of milkfat has been removed.~~

~~73. "Skim milk powder or dry skim milk" means skim milk dehydrated to dryness.~~

~~74.~~ 33. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.

~~75.~~ 34. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.

~~76.~~ 35. "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.

~~77.~~ 36. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.

~~78. "Vitamin D milk" means milk the vitamin D content of which has been increased by an approved method.~~

~~79. "Whipped butter" means butter to which a harmless gas has been added.~~

~~80. "Whipped cream" means cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, a harmless flavoring, or a harmless stabilizer.~~

~~81. "Whole milk powder or dry whole milk" means milk which has been dehydrated to dryness.~~

~~82.~~ 37. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, cream station, milk plant, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the ~~dairy~~ commissioner upon forms as the commissioner may

require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the ~~state dairy~~ department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, ~~he~~ the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, ~~he~~ the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, ~~he~~ the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk or cream from a dairy producer.

SECTION 3. AMENDMENT. Section 4-30-03.9 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.9. Entry, inspection, and investigation. Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner ~~of agriculture~~ may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner ~~of agriculture or the commissioner's authorized representative~~ under this section is confidential and may be used only for the administration of this chapter, but the department or the commissioner ~~of agriculture or the commissioner's authorized representative~~ may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk stabilization board, or in any court proceeding in which the department or the commissioner ~~of agriculture~~ is a party. This chapter does not prevent the use of information procured by the department or the commissioner ~~of agriculture or the commissioner's authorized representative~~ in the compiling or dissemination of general statistical data containing information procured from a number of licensees and compiled in a manner so as not to reveal individual information for any licensee or license applicant.

The commissioner ~~of agriculture or the commissioner's authorized representative~~ may also subpoena and take the testimony under oath of persons believed by the commissioner ~~of agriculture~~ to have information needed by the commissioner in administering and enforcing this chapter.

SECTION 4. AMENDMENT. Section 4-30-05 of the North Dakota Century Code is amended and reenacted as follows:

4-30-05. Application by ~~dairy~~ department for appointment of trustee - Hearing - Appointment. Upon the insolvency of a licensee as defined in section 4-30-04, the ~~dairy~~ department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of itself as trustee. Upon such notice to the licensee as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine such application in a

summary manner. If it shall appear to the court that the licensee is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the licensee for the purchase price of milk or milk products sold to such licensee or ~~to his~~ agent that the ~~dairy~~ department shall execute such trust, the court shall issue an order appointing the ~~dairy~~ department as a trustee, without bond, and the ~~dairy~~ department shall proceed in the manner set out in this chapter without further direction from the court.

SECTION 5. AMENDMENT. Section 4-30-06 of the North Dakota Century Code is amended and reenacted as follows:

4-30-06. Notice to file claims - When claims barred. The ~~dairy~~ department, as trustee, ~~by publication of a notice published once each week for three successive weeks in the official newspapers of the principal counties in which the licensee operated,~~ shall notify all persons having claims against the licensee personally by certified mail to file the same with the department. Any such person who fails to file ~~his~~ a claim with the department and to surrender to it any receipts ~~which he~~ obtained from such licensee within ~~forty-five~~ thirty days after ~~the last publication of such~~ receiving notice must be barred from participation upon such claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

SECTION 6. AMENDMENT. Section 4-30-09 of the North Dakota Century Code is amended and reenacted as follows:

4-30-09. Moneys collected on claims to be deposited in Bank of North Dakota. All moneys collected and received by the ~~dairy~~ department as trustee must be deposited in the Bank of North Dakota pending the marshalling of ~~said~~ the fund.

SECTION 7. AMENDMENT. Section 4-30-10 of the North Dakota Century Code is amended and reenacted as follows:

4-30-10. ~~Dairy department~~ Department to file report upon recovery of trust fund - Notice to claimants - Approving or modifying report. Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is necessary to pay all outstanding claims, the ~~dairy~~ department shall file its report in court showing the amount payable upon each claim, after recognizing any proper liens or pledges thereon or assignments thereof or deductions therefrom, with legal interest thereon. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in such manner as the department deems fair and equitable. Thereupon the court shall cite such claimants upon such notice by mail as it prescribes to appear upon a day fixed in the notice and show cause why such report should not be approved and distribution of ~~said~~ the fund made as outlined in the report. Upon such hearing the court shall approve such report or modify the same as justice may require and shall issue an order directing the distribution of the fund and discharging the department from its trust.

SECTION 8. AMENDMENT. Section 4-30-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-11. Attorney general to represent ~~dairy~~ department and may employ assistants - ~~Dairy department~~ Department need not pay court costs. The attorney general shall represent the ~~dairy~~ department in any action or proceeding brought under the provisions of section 4-30-04, and may employ outside legal assistance

when necessary, and may deduct the expense in connection therewith from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of section 4-30-04 when such fee, cost, or disbursement accrues to the state or to a county of this state.

SECTION 9. AMENDMENT. Section 4-30-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-12. License needed to sample, haul, or test - Training - Examination - Term - Fee. No person shall sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the ~~dairy~~ department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of ~~his~~ the substitute. An applicant for license shall file an application with the department stating the type of sampling, hauling, or testing the applicant wishes to be licensed for. Before a license is issued, the sampler shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and given by the department. The sampler shall show knowledge of the requirements of this chapter which pertain to sampling or testing, and must prove by actual demonstration that the sampler is competent and qualified to perform each type of sampling and testing listed on ~~his~~ the application. The commissioner shall then issue a license which shall state the types of sampling, hauling, or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after ~~he has taken~~ receiving any additional training and ~~has~~ satisfactorily ~~passed~~ passing the required examinations. Examinations shall be given by the department at times and places as the department shall determine. A licensee need not take any examinations when renewing ~~his~~ a license unless ~~his ability at performing sampling or testing is questioned~~ required by the commissioner or ~~his~~ the commissioner's assistants. All testers and samplers are required to attend a training session sponsored by the department every two years. Retraining or retesting or both may be required by the commissioner at any time when the commissioner reasonably determines it to be necessary. Licenses issued under this section shall expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The fee for the annual license is ten dollars, and a five dollar penalty fee is applied after the thirty-first day of January if renewals are not paid prior to that date.

SECTION 10. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Commissioner to investigate complaint. Upon receiving a written statement claiming that any provision of this chapter or the rules of the department have been violated, the commissioner shall investigate the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that a provision of this chapter or the rules of the department have been violated, the commissioner may take any action deemed appropriate.

SECTION 11. AMENDMENT. Section 4-30-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **4-30-15. Suspension or revocation of license - Judicial review - Emergency order.** Any proceedings under this chapter for the suspension or revocation of any license, or to otherwise determine compliance with this chapter ~~and~~, the rules and regulations and orders of the ~~dairy~~ department, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

Any person, firm, or corporation whose license is suspended is not eligible during the period of the suspension to engage in activities allowed by the suspended license either personally, or indirectly by having a financial interest in the business.

SECTION 12. AMENDMENT. Section 4-30-23 of the North Dakota Century Code is amended and reenacted as follows:

4-30-23. Sediment testing program for manufacturing cream. The ~~dairy~~ commissioner ~~shall~~ may promulgate rules and regulations concerning frequency and operational details of a sediment testing program.

SECTION 13. AMENDMENT. Section 4-30-24 of the North Dakota Century Code is amended and reenacted as follows:

4-30-24. Acceptable, probational, and reject cream. The ~~dairy~~ commissioner may promulgate rules and regulations concerning acceptable, probational, and reject cream.

SECTION 14. AMENDMENT. Section 4-30-27 of the North Dakota Century Code is amended and reenacted as follows:

4-30-27. Standards for the production of manufacturing grade milk - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the production and processing of milk for manufactured dairy products. Rules shall, at a minimum, comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

SECTION 15. AMENDMENT. Section 4-30-28 of the North Dakota Century Code is amended and reenacted as follows:

4-30-28. Farm certification. The ~~dairy~~ commissioner may promulgate rules and regulations concerning farm certification.

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[2] NOTE: Section 4-30-15 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

SECTION 16. AMENDMENT. Section 4-30-29 of the North Dakota Century Code is amended and reenacted as follows:

4-30-29. Grades of milk for manufacturing purposes. The ~~dairy~~ commissioner may promulgate rules and regulations concerning grades of milk for manufacturing purposes.

SECTION 17. AMENDMENT. Section 4-30-30 of the North Dakota Century Code is amended and reenacted as follows:

4-30-30. Milk grading program. The ~~dairy~~ commissioner may promulgate rules and regulations concerning a milk grading program.

SECTION 18. AMENDMENT. Section 4-30-31 of the North Dakota Century Code is amended and reenacted as follows:

4-30-31. Rejection and exclusion of milk. The ~~dairy~~ commissioner may promulgate rules and regulations concerning rejection and exclusion of milk.

SECTION 19. AMENDMENT. Section 4-30-32 of the North Dakota Century Code is amended and reenacted as follows:

4-30-32. New producers - Transfer producers. The ~~dairy~~ commissioner may promulgate rules and regulations concerning new producers and transfer producers.

SECTION 20. AMENDMENT. Section 4-30-33 of the North Dakota Century Code is amended and reenacted as follows:

4-30-33. Standards for dairy manufacturing or processing - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products. Rules must, at a minimum, comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. No plant may be operated or any dairy products sold in violation of these rules.

SECTION 21. AMENDMENT. Section 4-30-34 of the North Dakota Century Code is amended and reenacted as follows:

4-30-34. Inspection of dairy plants manufacturing or processing milk products. The ~~dairy~~ commissioner ~~shall~~ may promulgate rules and regulations for an inspection program of dairy plants manufacturing or processing milk products.

SECTION 22. AMENDMENT. Section 4-30-35 of the North Dakota Century Code is amended and reenacted as follows:

4-30-35. Standards for manufactured dairy products. The ~~dairy~~ commissioner ~~shall~~ may promulgate rules and regulations establishing standards for manufactured dairy products.

SECTION 23. AMENDMENT. Section 4-30-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same

as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, 1989 Recommendations of the United States Public Health Service" and all supplements added thereto except that the minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The commissioner may adopt as ~~dairy~~ department regulations other standards in addition to any amendments, supplements to, or new editions of ~~said~~ the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 24. AMENDMENT. Section 4-30-37 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules and regulations of the ~~dairy~~ department must be kept by each business sampling or testing milk or cream for at least twelve months in a manner approved by the ~~dairy~~ commissioner.

SECTION 25. AMENDMENT. Section 4-30-38 of the North Dakota Century Code is amended and reenacted as follows:

4-30-38. Transportation of milk and cream for manufacturing, processing, or bottling purposes - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the transportation of milk and cream to be used for manufacturing, processing, or bottling purposes. No facility or vehicle shall be used or operated in violation of these rules.

SECTION 26. AMENDMENT. Section 4-30-39 of the North Dakota Century Code is amended and reenacted as follows:

4-30-39. Transportation of processed and manufactured products - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the transportation of processed and manufactured milk or milk products. No facility or vehicle may be used or operated in violation of these rules.

SECTION 27. AMENDMENT. Section 4-30-42 of the North Dakota Century Code is amended and reenacted as follows:

4-30-42. Overrun limited. No person may permit an overrun in excess of twenty-five percent when manufacturing butter. The reports made to the ~~dairy~~ commissioner under the provisions of section 4-30-46 by persons who are engaged in the manufacture of butter are competent evidence against the person making the report in a prosecution. If the report shows that during a period of one month or more the person making the report and charged with a violation of this section on a certain day within the period of the report, has had or permitted an average percentage of overrun in excess of twenty-five percent in the manufacture of butter during said period, the report is prima facie evidence of a violation of this section.

SECTION 28. AMENDMENT. Section 4-30-48 of the North Dakota Century Code is amended and reenacted as follows:

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk or cream as provided in section 4-30-47, then the party selling or offering for

sale such milk or cream may require that the buyer or prospective buyer forward to the ~~office of the dairy commissioner~~ department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of sections 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

SECTION 29. AMENDMENT. Section 4-30-49 of the North Dakota Century Code is amended and reenacted as follows:

4-30-49. Standards considered minimum - Municipality may provide more stringent standards. The standards set forth in this chapter must be considered as minimum standards only. Nothing in this chapter may be construed to prevent any municipality from providing by ordinance more stringent or comprehensive standards than are contained herein nor is anything in this chapter or in the rules and regulations of the ~~dairy~~ department to be construed to prevent any person~~, business, or organization~~ concerned with dairying from using standards, inspections, or other practices or procedures which are more stringent or comprehensive.

SECTION 30. AMENDMENT. Section 4-30-52 of the North Dakota Century Code is amended and reenacted as follows:

4-30-52. Disposal of illegal milk or milk products - Seizure. Any milk or cream offered for sale and which is in violation of any provisions of this chapter or the rules and regulations of the ~~dairy~~ department must be colored with a harmless food coloring and returned to the owner. In addition, any milk or milk product which is in violation of this chapter or the rules of the ~~dairy~~ department may be seized or ordered held by the ~~dairy~~ commissioner and must be disposed of as any other illegal food or drug as outlined in chapter 19-02.1.

SECTION 31. AMENDMENT. Section 4-30-53 of the North Dakota Century Code is amended and reenacted as follows:

4-30-53. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty. Any person violating any of the provisions of this chapter ~~or~~, the rules of the ~~dairy~~ department or any order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the ~~dairy~~ commissioner through an administrative hearing pursuant to chapter 28-32. If a civil penalty is imposed by the ~~dairy~~ commissioner through an administrative hearing and the civil penalty is not paid, the ~~dairy~~ commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The ~~dairy~~ commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter, the department rules, or orders of the commissioner.

SECTION 32. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Inspections. Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

SECTION 33. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of 1989" and its supplements.

SECTION 34. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Labeling. North Dakota labeling standards and standards of identity are those set forth in the National Labeling and Education Act of 1990, all supplements, and rules and regulations promulgated thereunder. The commissioner shall adopt definitions consistent with federal law for, among other words, "milk", "butter", "cream", "cheese", and "ice cream". If state law conflicts with the National Labeling and Education Act of 1990, the National Labeling and Education Act of 1990 applies.

SECTION 35. REPEAL. Chapter 4-29, sections 4-30-13, 4-30-14, and 4-30-17 of the North Dakota Century Code, and sections 4-30-06.1, 4-30-16, and 4-30-51 of the 1991 Supplement to the North Dakota Century Code are repealed.

[3] **SECTION 36. REPEAL.** Section 4-30-41.1 of the North Dakota Century Code and section 4-30-45 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 37. EFFECTIVE DATE. Section 36 of this Act becomes effective when the rules and regulations promulgated under the National Labeling and Education Act of 1990 and its supplements become effective.

Approved April 1, 1993
Filed April 2, 1993

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[3] NOTE: Section 4-30-45 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 58

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Natural Resources Committee)

PEST CONTROL

AN ACT to create and enact a new section to chapter 63-01.1 of the North Dakota Century Code, relating to authority of county weed boards to control pests; and to amend and reenact subsection 1 of section 4-33-11, sections 63-01.1-02, 63-01.1-03, 63-01.1-04.1, subsections 2, 3, and 4 of section 63-01.1-05, sections 63-01.1-08, 63-01.1-09, 63-01.1-13, and 63-01.1-13.1 of the North Dakota Century Code, relating to financing local pest control programs and pest control by county weed boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-33-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any political subdivision of this state may appropriate money for the control of pests pursuant to this chapter or section 5 of this Act. If state funds are involved, ~~such~~ the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in ~~such~~ this event the governing body may, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that ~~such~~ the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.

SECTION 2. AMENDMENT. Section 63-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-02. Definitions. As used in this chapter:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.
2. "Commissioner" means the North Dakota ~~state~~ commissioner of agriculture.
3. "Control" means to prevent the spread of any noxious weed, designated by the commissioner or other control authority, by seed or any other propagating part or, pursuant to section 5 of this Act, to suppress, eradicate, or prevent or retard the spread of a pest.

4. "Control authority" means the commissioner and those ~~he~~ the commissioner may designate to act in ~~his~~ the commissioner's behalf, and the county weed board.

5. "County weed board" means members of the board of each county as appointed by the county commissioners of the county pursuant to section 63-01.1-04.

6. "County weed control officer" means the person appointed or designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.

7. "Eradicate" or "eradication" means to destroy a plant or, pursuant to section 5 of this Act, a pest so that it is not viable.

8. "Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise, but does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.

9. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the state cooperative extension service, or a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.

10. "Operator" means the person chiefly responsible for the farming or other operations being performed on the land, whether for self-benefit, or for the benefit of the landowner or another.

11. "Person" means any individual, partnership, firm, corporation, company, society, association, the state, or any department, agency, or subdivision thereof, or any other entity which occupies or owns land or which causes noxious weed seeds or propagating parts to be disseminated or transported in North Dakota.

12. "Pest" means any pest as defined in section 4-33-01.

13. "Township road" means a public road which is an improved road, constructed, maintained, graded, and drained by the township, or county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. In order for a section line to be a township road it must be graded and drained and be an improved maintained road. A township road is a public road which is not designated as part of a county, state, or federal-aid road system and is not located in an incorporated city.

SECTION 3. AMENDMENT. Section 63-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03. State weed control authority - Commissioner of agriculture - Powers and duties.

1. The duty of enforcing this chapter and carrying out its provisions and intent is vested in the commissioner who may designate employees of ~~his department~~ the commissioner and local weed control officers to act in ~~his~~

the commissioner's behalf, but under ~~his~~ the commissioner's supervision and direction.

2. The commissioner shall determine which weeds are noxious for the purposes of a state list of noxious weeds after consulting with the state cooperative extension service, and shall compile and keep current a list of ~~such~~ these noxious weeds.

3. The commissioner shall outline procedures, prepare and supply official notices, posters, report forms, and ~~such~~ any other documents ~~as are~~ needed in carrying out the provisions of this chapter. ~~Such~~ The documents ~~shall~~ must be supplied to weed control officers, county, township, and city authorities, and others as needed to carry out an effective weed control program or, pursuant to section 5 of this Act, pest control program. Official notices or posters such as the noxious weed list, rules and regulations, dates for controlling, and other compliance requirements ~~shall~~ must be prepared by the commissioner ready for printing in official newspapers, or for posting at least annually.

4. The commissioner shall cooperate with the county weed board, county weed control officers, highway patrol officers, county sheriffs, ~~the truck regulatory division,~~ and others in carrying out ~~his~~ the commissioner's duties under this chapter. ~~He~~ The commissioner shall also encourage the state cooperative extension service to disseminate information and to conduct educational campaigns with respect to eradication and control of noxious weeds or, for purposes of section 5 of this Act, pests.

5. The commissioner upon receiving complaints in writing from persons shall immediately refer the complaint to the proper weed control officer or control authority.

6. The commissioner shall encourage the cooperation of program agencies of both the federal and state governments in furtherance of the purposes of this chapter.

7. The commissioner shall prescribe, in accordance with chapter 28-32, and cause to be published, ~~such~~ rules, regulations, and procedures as ~~he~~ the commissioner deems necessary to carry out the intent of this chapter.

8. The commissioner shall require a minimum number of operational or program reports from weed control authorities or weed control officers as deemed necessary to keep posted on weed control progress and activity in the state and, for purposes of section 5 of this Act, pest control progress and activity in the state.

9. The commissioner shall call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and may also request the extension service or others to present educational information on weed control practices or, for purposes of section 5 of this Act, pest control practices. Weed control authority members ~~shall~~ must be invited to attend meetings called pursuant to this subsection.

SECTION 4. AMENDMENT. Section 63-01.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04.1. Powers and duties of county weed board.

1. The county weed board shall appoint or designate a county weed control officer who shall cooperate with the board and be responsible for operation and enforcement of this chapter within the district. The officer may be a member of the county weed board or may be any other interested and able person. The same person may serve as weed control officer for more than one county weed board. Employment ~~shall be~~ is for a tenure and at rates of compensation and reimbursement for travel expenses as the county weed board may prescribe and ~~shall be~~ is without regard to any provisions of law relating to age or dual compensation. The appointment or designation of a county weed control officer ~~shall~~ must be certified by the county weed board to the commissioner.

2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.

3. The county weed board may develop and compile a county list of noxious weeds. Any county list ~~shall~~ must, at a minimum, contain those noxious weeds determined by the commissioner. The commissioner may remove a county weed board noxious weed determination from the county list after consulting with the board and the state cooperative extension service.

4. County weed boards shall cooperate with all other control authorities.

5. The county weed board shall implement and pursue an effective program for control of noxious weeds and, for purposes of section 5 of this Act, pests.

6. The county weed board shall fix the time and place of regular meetings, which ~~shall~~ must occur at least once each year and ~~shall~~ be open to the public. The first regular meeting ~~shall~~ must be held prior to August 15, 1981. The board shall keep minutes of all meetings and a complete record of all official acts.

7. The county weed board shall make at least one annual inspection to determine the progress of weed control activities within the county and, for purposes of section 5 of this Act, the progress of pest control activities within the county.

8. The county weed board shall control and disburse all moneys received by the county, for weed control, from any source.

9. The county weed board shall render technical assistance to any city with a population of three thousand or more which establishes a program as provided in section 63-01.1-10.1.

SECTION 5. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed board - Pest control. The board of county commissioners in consultation with the county weed board may authorize the county weed board to control pests. A county weed board that has been authorized to control pests pursuant to this section ~~may expend~~ funds made available from state or federal sources for pest control purposes.

SECTION 6. AMENDMENT. Subsections 2, 3, and 4 of section 63-01.1-05 of the North Dakota Century Code are amended and reenacted as follows:

2. Become acquainted with the location of noxious weeds and, for purposes of section 5 of this Act, pests on all land within the county.

3. Through personal contact, by letter, telephone, or other means, encourage noxious weed and, for purposes of section 5 of this Act, pest control or eradication by all landowners or occupants within the county.

4. Investigate all complaints received by ~~himself~~ that person, the county weed board, or the commissioner. If the weed control officer determines that the complaint is justified, ~~he~~ the weed control officer shall personally serve upon the landowner written notice, or shall issue written notice by certified mail to the address of the landowner requiring the landowner to control or eradicate noxious weeds or, for purposes of section 5 of this Act, pests on ~~his~~ that person's land within five days, unless additional time is requested from and granted by the county weed board. A copy of the written notice ~~shall~~ must be sent by certified mail to the address of any lessee, tenant, renter, or operator of the land. If the landowner resides in another state, an additional time of not less than ten days ~~shall~~ must be granted to the landowner for control and eradication purposes. The weed control officer may, upon failure by the landowner to do so in the time limits provided, cause noxious weeds or, for purposes of section 5 of this Act, pests to be controlled or eradicated and the expenses to be charged against the land of the landowner.

When noxious weeds or, for purposes of section 5 of this Act, pests in an area of more than three acres [1.21 hectares] in each forty-acre [16.19-hectare] area, in which a crop or trees are growing, are to be controlled, or eradicated because of infestations of noxious weeds or pests, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the controlling or eradication of the noxious weeds or pests on the land, and the controlling or eradication ~~shall~~ may not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.

The expenses charged ~~shall~~ become a part of the taxes to be levied against the land for the ensuing year and ~~shall~~ must be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto, or the landowner shall be subject to the penalties provided in section 63-01.1-15. Complaints, subject to the approval of the weed board, may be initiated by the weed control officer, and notice served in accordance with this subsection.

SECTION 7. AMENDMENT. Section 63-01.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-08. Entry upon land for weed control purposes - Remedial requirements - Liens - Penalty.

1. The commissioner, any control authority, county weed control officer, or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds or, for purposes of section 5 of this Act, pests or other materials, without the consent of the landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

2. If any land is found to be infested with noxious weeds or, for purposes of section 5 of this Act, pest by the commissioner, any control authority, county weed control officer, or other authorized person, the county weed board, by resolution adopted by two-thirds of its members, may confirm the fact. The board may set forth minimum remedial requirements for control of the infested property. The board shall deliver, personally or by certified mail, to the address of the landowner of the infested land:

   a. A copy of the resolution.

   b. A statement of the cost of fulfilling the requirements for control.

   c. A request that the requirements contained in the resolution be carried out at the landowner's expense within five days, unless additional time is requested from and granted by the board, or on a cooperative basis. If the landowner resides in another state, an additional time of not less than thirty days ~~shall~~ must be granted to the landowner for control and eradication purposes.

3. A copy of the resolution ~~shall~~ must be sent by certified mail to any lessee, renter, tenant, or operator of the land.

4. A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weeds or, for purposes of section 5 of this Act, pests on the infested area within the time designated may be fined not more than fifty dollars per day for each day of violation and not more than a total of two thousand five hundred dollars per year as determined by the district court. Any person accused of failure to perform remedial requirements under this section is entitled to a trial by jury, upon request. The accumulated fines under this section are a lien against the property of the landowner from the day the resolution is delivered to the landowner by the weed board. All fines collected pursuant to this section ~~shall~~ must be deposited with the treasurer of the political subdivision and credited to the weed board noxious weed control fund in the political subdivision in which the fine originated. Fines collected pursuant to this section for failure or refusal to perform remedial requirements for the control of pests on an infested area must be credited to the weed board noxious weed control fund but dedicated for use by the county weed board to control pests.

5. When noxious weeds or, for purposes of section 5 of this Act, pests in an area of more than three acres [1.21 hectares] in each forty-acre [16.19-hectare] area, in which a crop or trees are growing, are to be controlled or eradicated because of infestations of noxious weeds or pests, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the controlling or eradication of the noxious weeds or pests on the land, and the controlling or eradication ~~shall~~ may not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.

SECTION 8. AMENDMENT. Section 63-01.1-09 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-09. County weed board to control or eradicate noxious weeds and pests **along county and township highways.** The county weed board shall eradicate or control noxious weeds or, for purposes of section 5 of this Act, pests as defined in this chapter along county and township highways within the county and the expense ~~thereof shall~~ incurred for noxious weed control must be paid from funds as provided in section 63-01.1-06.

SECTION 9. AMENDMENT. Section 63-01.1-13 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13. Publicly owned land - Weed and pest **control.** The commissioner shall make every effort possible to arrange a satisfactory noxious weed and pests eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control officers shall make every effort possible to arrange a satisfactory noxious weed or, for purposes of section 5 of this Act, pest eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds and pests on ~~such~~ these lands. In the event that agencies coming within the provisions of this section ~~shall~~ fail or refuse to eradicate or control noxious weeds and pests in accordance with this section, the commissioner may hold a public hearing under ~~such~~ conditions and terms as ~~he shall deem~~ the commissioner deems advisable, to determine the reason for ~~such~~ the failure or refusal.

SECTION 10. AMENDMENT. Section 63-01.1-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13.1. Noxious weed and pest **control on game and fish land.** Upon failure of the game and fish department to adequately destroy noxious weeds and pests, or control and prevent spreading and dissemination of noxious weeds and pests, on any parcel of land under its control, the county weed board for the county in which all or a portion of the land owned, leased, or managed by the game and fish department is located may, upon approval of the commissioner, enter upon the land owned, leased, or managed by the game and fish department for the purposes of destruction, control, or prevention of noxious weeds and pests. All expenditures by a county weed board for destruction, control, or prevention of noxious weeds and pests on game and fish lands pursuant to this section must be reimbursed within

thirty days by the game and fish department to the board upon adequate certification by the board.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 59

SENATE BILL NO. 2139
(Agriculture Committee)
(At the request of the Department of Agriculture)

PESTICIDE DISTRIBUTION REGULATION

AN ACT to amend and reenact subsection 1 of section 4-35-12 of the North Dakota Century Code, relating to the regulation of outlets for distribution of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 1 of section 4-35-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained certification from the North Dakota state university extension service, or the service's designee in the county in which the applicant operates his principal place of business. A certified person is required at each location or outlet located within this state from which restricted use pesticides are distributed. Any manufacturer, registrant, or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

Approved March 10, 1993
Filed March 11, 1993

[1] NOTE: Section 4-35-12 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 60

SENATE BILL NO. 2436
(Senators Nelson, Kelsh, Kinnoin)
(Representative Nicholas)

PESTICIDE REGULATION

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to a state preemption of local regulation of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority of political subdivisions regarding pesticides. No political subdivision, including a home rule city or county, may adopt or continue in effect any ordinance, resolution, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

Approved March 18, 1993
Filed March 18, 1993

CHAPTER 61

SENATE BILL NO. 2387
(Senators Kelsh, Nelson, Wogsland)
(Representatives Aarsvold, Kempenich, Rennerfeldt)

PESTICIDE DISPOSAL

AN ACT relating to an agricultural pesticide and pesticide container disposal program; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Agricultural pesticide container disposal - Compensation.

1. The words used in this section are as defined in North Dakota Century Code section 4-35-05.

2. In consultation with an advisory board consisting of the state health officer; the state engineer; the state geologist; the director of the North Dakota state university extension service; the administrative officer of the state soil conservation committee; the attorney general; and two individuals representing agribusiness organizations, one individual representing a farm organization, and one member of the legislative assembly, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall design and implement a project to:

   a. Collect and either recycle or dispose of unusable pesticides and empty, triple-rinsed agricultural pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the containers and pesticides. The commissioner may limit the type and quantity of containers and pesticides acceptable for collection.

   b. Promote proper agricultural pesticide container management. The commissioner, in consultation with the director of the North Dakota state university extension service, shall promote proper methods of pesticide container management, including information on the variety of pesticide containers available.

   c. Evaluate recycling options and investigate markets and business opportunities to encourage recycling of containers for resource recovery.

3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. State agencies, when called upon, shall assist the commissioner in implementing the project.

4. For services rendered in connection with the design and implementation of the project, the legislator member of the advisory board is entitled to

compensation and expense reimbursement in the amounts provided for in section 54-35-10 and the other members selected by the commissioner of agriculture are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. Project scope and evaluation - Proposed legislation. The project must occur in areas to be determined by the commissioner of agriculture in consultation with the persons listed in subsection 2 of section 1 of this Act. Before December 1, 1994, the commissioner of agriculture shall determine whether the project implemented under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall prefile appropriate legislation for introduction in the fifty-fourth legislative assembly.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of $112,000, or so much of the sum as may be necessary, to the commissioner of agriculture for the purpose of analyzing and disposing of pesticide containers and unusable pesticides for the biennium beginning July 1, 1993, and ending June 30, 1995. Expenditure of funds appropriated by this section may not exceed the amount of funds remaining unspent pursuant to the appropriation contained in 1991 Senate Bill No. 2025.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 62

HOUSE BILL NO. 1156
(Education Committee)
(At the request of the State Board of Vocational Education)

BOARD FOR VOCATIONAL AND TECHNICAL EDUCATION

AN ACT to create and enact section 15-47-00.1 of the North Dakota Century Code, relating to the definition of vocational education; and to amend and reenact sections 4-37-03, 14-06.1-07, 15-20.1-01, 15-20.1-02, 15-20.1-05, subsection 5 of section 15-20.2-01, section 15-20.2-10, subsections 4 and 8 of section 15-20.4-01, sections 15-40.1-16.1, 15-41-05, 15-41-24, 27-21-09, 52-02-02.1, subsection 2 of section 52-08.1-04, subsection 12 of section 54-10-14, section 54-56-01, subdivision m of subsection 1 of section 57-38-01.2, and subsection 2 of section 57-38-67 of the North Dakota Century Code, relating to the changing of "state board of vocational education" to "state board for vocational and technical education", and changing "director of vocational education" to "director of vocational and technical education", and changing "vocational education centers" to "area vocational and technology centers"; and to repeal section 15-20.1-09 of the North Dakota Century Code, relating to vocational school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

4-37-03. Purpose - Powers and duties. The agriculture in the classroom council shall develop agricultural curriculum activities and train teachers in these agricultural curriculum activities for grades kindergarten through twelve in this state's public school system. The council shall work with all educators, including the superintendent of public instruction, the state ~~department of~~ board for vocational and technical education, the United States department of agriculture, and the state commissioner of agriculture in accomplishing its purpose. The council shall render services consistent with this purpose which include:

1. Consultations with the state superintendent of public instruction, the state ~~department of~~ board for vocational and technical education, the state commissioner of agriculture, and the United States department of agriculture.

2. Preparation of instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles.

3. Provide training programs for public school teachers in developed agricultural curriculum activities.

4. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles.

5. Monitor the quality and condition of the agriculture in the classroom program.

SECTION 2. AMENDMENT. Section 14-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

14-06.1-07. Program goals. Each of the service centers shall develop a goal to serve a stated number of urban and rural displaced homemakers. In addition, the service centers shall develop plans for including displaced homemakers in existing job training and placement programs offered by job service, colleges, vocational and technical education, or other suitable agencies.

SECTION 3. AMENDMENT. Section 15-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Director" ~~shall mean~~ means the director of vocational and technical education.

2. "Regulations" ~~shall mean~~ means regulations made by the director with the approval of the state board.

3. "State board" ~~shall mean~~ means the state board ~~of~~ for vocational and technical education which is the state board of public school education.

SECTION 4. AMENDMENT. Section 15-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-02. State board ~~of~~ for vocational and technical education - Director of vocational and technical education - Appointment, qualifications, assistants, duties. The state board of public school education shall be the state board ~~of~~ for vocational and technical education. The state board, acting through the office of the superintendent of public instruction, shall appoint a director and executive officer ~~for~~ of vocational and technical education who shall be charged with the administration, under the direction and supervision of the board, of the provisions of this chapter relating to vocational and technical education. The state board, acting through the office of the superintendent of public instruction, shall designate such assistants to the director as may be necessary to carry out the provisions of this chapter. The duties, terms of office, and compensation of the director and of his assistants shall be determined by the state board. The director shall hold as a minimum a baccalaureate degree received from a recognized college or university. ~~He~~ The director shall enforce such rules and regulations as the state board may adopt and shall prepare such reports concerning vocational education as the state board may require.

SECTION 5. AMENDMENT. Section 15-20.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-05. Custody and payment of vocational education funds. The state board shall be charged with the duty of administering all funds that are received from federal and state sources and accept and use gifts made unconditionally by will or otherwise for purposes of carrying out this chapter for vocational education. All such moneys received shall be placed in the custody of the state treasurer, and

shall be paid in accordance with legislative appropriations by the office of management and budget as directed by the director of vocational and technical education.

SECTION 6. AMENDMENT. Subsection 5 of section 15-20.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "State board" means the state board ~~of~~ for vocational and technical education.

SECTION 7. AMENDMENT. Section 15-20.2-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.2-10. Appropriated and federal funds used for distribution. The funds distributed to the area vocational and technology centers under the provisions of section 15-20.2-09 must be paid out of moneys appropriated to the state board ~~of~~ for vocational and technical education, including federal funds allotted to the state to promote and attain the purposes of state and federal legislation on vocational education.

[1] **SECTION 8. AMENDMENT.** Subsections 4 and 8 of section 15-20.4-01 of the North Dakota Century Code are amended and reenacted as follows:

4. "Board" means the state board ~~of~~ for vocational and technical education.

8. "Executive officer" means the director of vocational and technical education.

SECTION 9. AMENDMENT. Section 15-40.1-16.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **15-40.1-16.1. Transportation aid for certain vocational education and special education programs.** There must be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board ~~of~~ for vocational and technical education. Such amount must be the same amount for mileage and per day as is provided in subsection 1 of section 15-40.1-16. Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.

2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

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[1] NOTE: Section 15-20.4-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

[2] NOTE: Section 15-40.1-16.1 was also amended by section 5 of House Bill No. 1184, chapter 180.

School districts entitled to transportation aid pursuant to this section shall receive such aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether or not such pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. Provided, however, that no school district may receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day. Notwithstanding any other provisions of this section, the superintendent of public instruction shall, upon request, make the payments under this section which are due to school districts participating in area vocational and technology centers or multidistrict special education programs, for the transportation of pupils in those centers and programs, directly to the respective area vocational and technology centers or multidistrict special education programs.

SECTION 10. AMENDMENT. Section 15-41-05 of the North Dakota Century Code is amended and reenacted as follows:

15-41-05. State board of public school education to prescribe qualifications prerequisite to high school obtaining aid under federal acts. The state board of public school education, acting as the state board for vocational and technical education, shall make all rules and regulations required for compliance with the program of the Smith-Hughes Act, the George-Deen Act, and other federal acts under which a high school may participate in financial benefits accorded by the federal government, and to be eligible for such benefits, a high school must comply with such rules and regulations and conform to all qualification requirements and conditions therein specified.

SECTION 11. AMENDMENT. Section 15-41-24 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41-24. High schools - Minimum curriculum. The following units of study shall be made available to all students in each public and private high school in this state at least once during each four-year period, and each private high school shall comply with the requirements of this section if such high school is to receive approval by the department of public instruction:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units. Effective July 1, 1994, social studies must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units. For purposes of this subsection vocational education shall include home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by the state board ~~of~~ for vocational and technical education.

SECTION 12. Section 15-47-00.1 of the North Dakota Century Code is created and enacted as follows:

15-47-00.1. Definition. In this title, unless the context or subject matter otherwise requires "vocational education" means vocational and technical education.

SECTION 13. AMENDMENT. Section 27-21-09 of the North Dakota Century Code is amended and reenacted as follows:

27-21-09. Cooperation with other agencies and departments of the state - Right to inspect facilities of state institutions - Right to examine children. The division of juvenile services shall cooperate with and receive the cooperation of the department of human services, the department of public instruction, the ~~department of~~ board for vocational and technical education, the juvenile courts, the state department of health and consolidated laboratories, and such other agencies and departments of the state as may be necessary to carry out the objectives of this chapter. The division of juvenile services may inspect at all reasonable times the facilities of those institutions within the state it is authorized to utilize under this chapter, and may examine any child it has placed in the care of such institution, and may contract with public and private agencies to provide services for them or to retain from them required services to meet the purpose and objective of this chapter.

SECTION 14. AMENDMENT. Section 52-02-02.1 of the North Dakota Century Code is amended and reenacted as follows:

52-02-02.1. Adult education and training - Grants to students. Job service North Dakota may make grants of up to five hundred dollars per person to Job Training Partnership Act eligible students enrolled in adult basic and secondary education programs and training programs for adults approved by job service North Dakota. No grants may be made unless federal funds received by the state for job training services as defined in the Job Training Partnership Act [Pub. L. 97-300; 96 Stat. 1361; 29 U.S.C. 1604] have been obligated. Job service may collect an administrative fee not to exceed ten percent of the amount of grants made under this section. Job service North Dakota shall, in cooperation with the superintendent of public instruction, the ~~department of~~ board for vocational and technical education, and any other state agency providing or administering adult education services, coordinate the grant program established under this section. Job service North Dakota shall adopt rules to implement the grant program established under this section including rules regarding eligibility requirements and use of grant proceeds.

SECTION 15. AMENDMENT. Subsection 2 of section 52-08.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Programs must be conducted in cooperation with appropriate state board for vocational and technical education approved training providers and institutions.

[3] **SECTION 16. AMENDMENT.** Subsection 12 of section 54-10-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. ~~Vocational education~~ Area vocational and technology centers.

SECTION 17. AMENDMENT. Section 54-56-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[4] **54-56-01. Children's services coordinating committee - Membership.** The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the director of job service North Dakota, the director of the department of corrections and rehabilitation, or a designee of the director of the department of corrections and rehabilitation, the director of the office of management and budget, or a designee of the director of the office of management and budget, the director of vocational and technical education, the chairperson of the governor's committee on children and youth, a representative of the Indian affairs commission, a designee of the chief justice, and a member at large to be appointed by the governor. The governor or the governor's designee shall act as chairperson.

SECTION 18. AMENDMENT. Subdivision m of subsection 1 of section 57-38-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax

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[3] NOTE: Section 54-10-14 was also amended by section 1 of House Bill No. 1155, chapter 514.

[4] NOTE: Section 54-56-01 was also amended by section 1 of House Bill No. 1295, chapter 539.

return. For the purposes of this subdivision, "beginning farmer" means any person who is:

(1) A resident of this state.

(2) Receiving more than one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.

(3) Intending to use any farmland to be purchased or rented for agricultural purposes.

(4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board ~~of~~ for vocational and technical education or an equivalent program approved by the commissioner of agriculture.

(5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.

SECTION 19. AMENDMENT. Subsection 2 of section 57-38-67 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Beginning farmer" means any person who is:

a. A resident of this state;

b. Receiving more than half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which a deduction will be claimed under sections 57-38-67 through 57-38-70;

c. Intending to use any farmland to be purchased or rented for agricultural purposes;

d. Except for tax-exempt transactions entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board ~~of~~ for vocational and technical education or an equivalent program approved by the commissioner of agriculture; and

e. Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

SECTION 20. REPEAL. Section 15-20.1-09 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 19, 1993
Filed March 19, 1993

ALCOHOLIC BEVERAGES

CHAPTER 63

SENATE BILL NO. 2265
(Senators Maxson, Kelly, Lindgren)
(Representatives Keiser, Kelsch, Mahoney)

ALCOHOL SALES ON SUNDAY

AN ACT to amend and reenact sections 5-02-01.1, 5-02-03, 5-02-05, 5-02-05.1, and 12.1-30-03 of the North Dakota Century Code, relating to permits and fees for dispensing and consuming alcoholic beverages; and to repeal section 5-02-05.2 of the North Dakota Century Code, relating to Sunday alcoholic beverage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. ~~Special~~ Event permit authorized - Penalty. The local governing body may by ~~special~~ permit authorize ~~an on sale, off sale, or on or off sale~~ a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at ~~special~~ events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county or a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993. A fee for the local ~~special~~ permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days, and may include Sundays. The local governing body may establish rules ~~as it may deem proper~~ to regulate and restrict the operation of ~~a special~~ an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a ~~special~~ permit is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 5-02-03 of the North Dakota Century Code is amended and reenacted as follows:

5-02-03. Local license fees. The fee for an annual local on and off sale liquor license must be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee shall not exceed one thousand dollars. The fee for an annual on and off sale local beer license must be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive on sale liquor license must be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee must not exceed one thousand dollars. The fee for an annual local exclusive on sale local beer license must be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive off sale beer or off sale liquor license must not be more than the fee charged for an on and off sale license. The local governing

body may by ordinance or resolution provide for issuance of licenses for any period not to exceed one year and may allow for proration and refunds of license fees. In addition to any other license fee permitted by this section, a license fee may be increased by not more than five dollars for each Sunday the licensee sells alcoholic beverages.

SECTION 3. AMENDMENT. Section 5-02-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **5-02-05. Dispensing prohibited on certain days - Penalty.** ~~Except as permitted by sections 5-02-05.1 and 5-02-05.2, any~~ Any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before ~~eight a.m.~~ twelve noon on ~~Mondays~~ Sundays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Good Friday or Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Section 5-02-05.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-05.1. ~~Special~~ Sunday alcoholic beverage permit - Penalty.

1. Any city or county may issue a ~~special~~ Sunday alcoholic beverage permit to a ~~private club, lodge, restaurant, motel, or hotel licensed as a retail~~ qualified alcoholic beverage ~~establishment~~ licensee licensed under this chapter ~~5-02;~~ or to a publicly owned or operated facility. For purposes of this section, "qualified alcoholic beverage licensee" has the same meaning as in section 5-02-01.1. A county may not issue a permit under this section to a ~~private club, lodge, restaurant, motel, or hotel~~ retail alcoholic beverage establishment located within the geographical boundaries of a city.

2. The authority for issuing ~~such special~~ the permit rests solely with the governing body of the city or county. A ~~special~~ permit may be granted only upon proper application to and approval by the governing body, and must include payment of a fee determined by the governing body. A ~~special~~ permit granted by the city or county may be effective for more than one Sunday.

3. Under the ~~special~~ permit, alcoholic beverages may be distributed and dancing may be permitted in the ~~private club, lodge, restaurant, motel, hotel,~~ establishment or ~~publicly owned or operated~~ facility. A city or county may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on ~~the specified~~ Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority of the ~~special~~ permit. The ~~private club, lodge, restaurant, motel, hotel,~~ establishment or ~~publicly owned or operated~~ facility granted the ~~special~~ permit shall enforce the requirements of this section.

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[1] NOTE: Section 5-02-05 was also amended by section 1 of House Bill No. 1388, chapter 64.

4. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

~~5. For purposes of this chapter, unless the context otherwise indicates, "restaurant" means a commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this chapter, and which has a city, county, or state restaurant license and has paid the appropriate city food and lodging taxes for a continuous six-month period before the application for the permit, or which derives fifty percent or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.~~

SECTION 5. AMENDMENT. Section 12.1-30-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-30-03. Businesses allowed to operate on Sunday - Limitations. Subject to the limitations of this section and section 12.1-30-02, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this section to operate on Sunday include:

1. Restaurants, cafeterias, or other prepared food service organizations.
2. Hotels, motels, and other lodging facilities.
3. Hospitals and nursing homes, including the sale of giftware on the premises.
4. Dispensaries of drugs and medicines.
5. Ambulance and burial services.
6. Generation and distribution of electric power, water, steam, natural gas, oil, or other fuel used as a necessary utility.
7. Distribution of gas, oil, and other fuels.
8. Telephone, telegraph, and messenger services.
9. Heating, refrigeration, and cooling services.
10. Railroad, bus, trolley, subway, taxi, and limousine services.
11. Water, air, and land transportation services and attendant facilities.
12. Cold storage warehouse.
13. Ice manufacturing and distribution facilities and services.
14. Minimal maintenance of equipment and machinery.
15. Plant and industrial protection services.
16. Industries where continuous processing or manufacturing is required by the very nature of the process involved.

17. Newspaper publication and distribution.

18. Newsstands.

19. Radio and television broadcasting.

20. Motion picture, theatrical, and musical performances.

21. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:

    a. Air conditioning system.

    b. Batteries.

    c. Electrical system.

    d. Engine cooling system.

    e. Exhaust system.

    f. Fuel system.

    g. Tires and tubes.

    h. Emergency work necessary for the safe and lawful operation of the motor vehicle.

22. Athletic and sporting events.

23. Parks, beaches, and recreational facilities.

24. Scenic, historic, and tourist attractions.

25. Amusement centers, fairs, zoos, and museums.

26. Libraries.

27. Educational lectures, forums, and exhibits.

28. Service organizations (USO, YMCA, etc.).

29. Coin-operated laundry and drycleaning facilities.

30. Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday; however, the governing body of a city or county may, by ordinance, increase the number of employees allowed to work in a store at one time on a Sunday.

31. Bait shops for the sale of live bait and fishing tackle.

32. Floral nurseries.

33. Christmas tree stands.

34. Hobby shows, craft shows, fairs, and exhibits.

35. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required.

36. Community festivals licensed or authorized by the governing body of a city or the board of county commissioners.

37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in sections 5-02-05~~,~~ and 5-02-05.1~~, and 5-02-05.2~~.

38. Credit approval services, lodging and travel reservation services, and, notwithstanding section 12.1-30-02, telemarketing of goods and services.

SECTION 6. REPEAL. Section 5-02-05.2 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 64

HOUSE BILL NO. 1388
(Representatives Clayburgh, Gorman, Huether, Svedjan)
(Senators DeMers, Lindgren)

GOOD FRIDAY ALCOHOL SALES

AN ACT to amend and reenact section 5-02-05 of the North Dakota Century Code, relating to the dispensing of alcoholic beverages on certain days.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **5-02-05. Dispensing prohibited on certain days - Penalty.** Except as permitted by sections 5-02-05.1 and 5-02-05.2, any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on ~~Good Friday or~~ Thanksgiving Day, or after six p.m. on Christmas Eve is guilty of a class A misdemeanor.

Approved March 22, 1993
Filed March 23, 1993

[1] NOTE: Section 5-02-05 was also amended by section 3 of Senate Bill No. 2265, chapter 63.

BANKS AND BANKING

CHAPTER 65

HOUSE BILL NO. 1153
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

CREDIT UNION SUPERVISION

AN ACT to amend and reenact section 6-01-01 of the North Dakota Century Code, relating to department of banking and financial institutions supervision of state-chartered credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-01 of the North Dakota Century Code is amended and reenacted as follows:

6-01-01. Management and control - State department of banking and financial institutions. The state department of banking and financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of banking and financial institutions, and known as the state examiner. Whenever the term state examiner is used in this code, it means the commissioner of banking and financial institutions. The state department of banking and financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota ~~and all credit unions, organized or doing business under the laws of this state. The same power granted to the state department of banking and financial institutions with reference to the corporations named in this section is granted to the state credit union board with reference to credit unions~~.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 66

HOUSE BILL NO. 1175
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

BANKING AT SEPARATE FACILITIES

AN ACT to amend and reenact sections 6-01-02, 6-03-13.1, 6-03-17, and 6-03-19 of the North Dakota Century Code, relating to the definition of paying and receiving activity conducted at separate facilities and paying and receiving stations, and to publishing a notice to discontinue a paying and receiving station.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-02 of the North Dakota Century Code is amended and reenacted as follows:

[1] **6-01-02. Definitions.** As used in this title, unless the context or subject matter otherwise requires:

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.

2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, savings bank, or trust company, whether organized under the laws of this state or of the United States, engaged in the business of banking.

3. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, travelers checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.

4. "Banking department" means the state department of banking and financial institutions.

5. "Banking institution" means any bank, trust company, or bank and trust company organized under the laws of this state.

6. "Commissioner" means the commissioner of banking and financial institutions.

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[1] NOTE: Section 6-01-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54, and by section 1 of Senate Bill No. 2227, chapter 67.

6.1. "Corporate central credit union" means a credit union operated for the primary purpose of serving corporate accounts. A credit union is deemed to be a corporate central credit union when its total dollar amount of outstanding corporate loans plus corporate share and deposit holdings is equal to or greater than seventy-five percent of its outstanding loans plus share and deposit holdings.

7. "Credit union" means a cooperative, nonprofit association organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.

7.1. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.

8. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.

8.1. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].

9. ~~"Paying and receiving station" means a place of business maintained by a banking institution separate from its main banking house within the county of its domicile or in an adjoining county for the purpose of receiving and paying out deposits, issuing drafts, traveler's checks, and similar instruments, making loans, handling and making collections, and cashing checks and drafts.~~

~~10.~~ "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

SECTION 2. AMENDMENT. Section 6-03-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.1. Separate facilities authorized. Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 and under the supervision of the state banking board, and any national bank doing business in this state, may maintain and operate separate and apart from its banking house facilities for drive-in and walkup service, in addition to such service at its main banking house, and at its paying and receiving stations, if any. A separate facility must be within the corporate city limits of the main banking house or within three miles [4.83 kilometers] of such city but may not be within the corporate limits of another city. ~~The services rendered~~ Any activity incidental to the business of banking may be transacted at a separate facility ~~are limited to~~ including receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and receiving payments payable at the bank.

SECTION 3. AMENDMENT. Section 6-03-17 of the North Dakota Century Code is amended and reenacted as follows:

6-03-17. Transaction of business at and regulation of station. ~~No banking~~ Any activity incidental to the business of banking may be transacted in any paying and receiving station ~~other than~~ including receiving and paying out deposits, issuing drafts, travelers' checks, and similar instruments, making loans, handling and making collections, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and cashing checks and drafts. The state banking board may prescribe rules for the operation of each station.

SECTION 4. AMENDMENT. Section 6-03-19 of the North Dakota Century Code is amended and reenacted as follows:

6-03-19. Cancellation of station permit on application to board. Whenever any banking institution which has been granted a permit to establish and maintain a paying and receiving station deems it advisable to discontinue the maintenance of such station, it may make written application to the state banking board for the cancellation of its permit, and thereupon the board may enter its order canceling such permit within such time as the board may specify therein. The banking institution shall publish notice of the application as required by the board by rule.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 67

SENATE BILL NO. 2227
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

BANK FIDUCIARY POWERS

AN ACT to create and enact a new chapter to title 6 and a new subsection to section 6-03-02 of the North Dakota Century Code, relating to policies, self-serving practices, and administration of fiduciary powers by banking institutions; and to amend and reenact subsection 2 of section 6-01-02 and section 6-05-01 of the North Dakota Century Code, relating to removing trust companies from the definition of a bank and to banks exercising fiduciary powers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 2 of section 6-01-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, ~~or trust company,~~ whether organized under the laws of this state or of the United States, engaged in the business of banking.

SECTION 2. A new subsection to section 6-03-02 of the North Dakota Century Code is created and enacted as follows:

To exercise fiduciary powers upon application as provided under section 6-05-01 as the board may prescribe by rule.

SECTION 3. AMENDMENT. Section 6-05-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-05-01. Who may form - Corporation has perpetual existence. Any number of persons, not less than nine, at least three of whom must be residents of this state, may associate themselves and form a corporation for the purpose of transacting business as an annuity, safe deposit, and trust company. Its existence shall be perpetual.

At the time and place stated, and through any sources of information at its command, the board ~~diligently~~ shall examine and consider all relevant factors including whether the place where such company is proposed to be located is in need of a further annuity, safe deposit, and trust company, whether the proposed institution is adapted to the filling of such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial

[1] NOTE: Section 6-01-02 was also amended by section 1 of House Bill No. 1175, chapter 66, and by section 106 of Senate Bill No. 2223, chapter 54.

standing as shown by a detailed financial statement to be furnished by them, that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be established. The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed institution, and any reasons advanced by any person why such institution should not be permitted to be organized. At the termination of such hearing, the board shall make a brief statement in writing of its conclusions, and if it finds that the proposed institution should not be permitted to organize, it shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or attached to the organization certificate, together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate to the secretary of state. A determination in favor of such organization must be joined in by all the members of the board.

Any banking association organized under chapter 6-02 may apply to the ~~state banking~~ board for ~~a hearing as provided for in this section and~~ an order authorizing the applicant to ~~transact business as a trust company~~ exercise fiduciary powers. If the determination of the board is in favor of the applicant the board shall make its order authorizing the applicant to engage in the business of a trust company upon its showing full compliance with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association shall not be required to be divided in shares of one hundred dollars each as provided by section 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted authority to engage in the business of a trust company by the ~~state banking~~ board. Thereafter such banking association ~~shall~~ must be subject to the jurisdiction of the ~~state banking~~ board as to its trust company operations the same as trust companies organized under chapter 6-05.

Any corporation organized and authorized to transact the business of fidelity insurance and corporate suretyship prior to July 1, 1983, pursuant to the former sections 6-05-08 and 6-05-19 through 6-05-24 and sections 6-05-30 through 6-05-33 may continue to operate under the provisions of those sections as they existed on June 30, 1983.

SECTION 4. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Policies and procedures on brokerage placement practices. Each banking institution exercising investment discretion with respect to an account must adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations. Among other relevant matters, the written policies and procedures should address where appropriate:

1. The selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons.

2. The acquisition of any services or products, including research services, in return for brokerage commissions.

3. The allocation of research or other services among accounts, including those which did not generate commissions to pay for the research or other services.

4. The need, in appropriate instances, to make disclosures concerning the policies and procedures to prospective and existing customers.

Administration of fiduciary powers.

1. The board of directors is responsible for the proper exercise of fiduciary powers by the banking institution. All pertinent matters, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees used by the banking institution in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of any of the banking institution's fiduciary powers as it may consider proper to assign to its directors, officers, employees, or committees as it may designate.

2. No fiduciary account may be accepted without the prior approval of the board of directors, or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility. A written record must be made of all acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the banking institution has investment responsibilities, a prompt review of the assets must be made. The board must ensure that at least once during every calendar year, and within fifteen months of the last review, all the assets held in or for each fiduciary account where the banking institution has investment responsibilities are reviewed to determine the advisability of retaining or disposing of the trust assets.

3. All officers and employees taking part in the operating of trust activities must be adequately bonded.

4. Every banking institution exercising fiduciary powers must designate, employ, or retain legal counsel who is readily available to pass upon fiduciary matters and to advise the banking institution as to its trust activities.

5. Every banking institution exercising fiduciary powers must adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. The policies and procedures, in particular, must ensure the banking institution may not use inside information in connection with any decision or recommendation to purchase or sell any security.

Books and accounts.

1. Every banking institution exercising fiduciary powers must keep its fiduciary records separate and distinct from other records of the banking institution. All fiduciary records necessary for reporting purposes must be maintained for such time as to enable the banking institution to furnish such information or reports with the commissioner. The fiduciary records must contain full information relative to each account.

2. Every banking institution must keep an adequate record of all pending litigation to which it is a party in concerning its exercise of fiduciary powers.

3. A banking institution must retain the records required for a period of three years from the later of the termination of the fiduciary account relationship to which the records relate or of litigation relating to the account.

Audit of trust activities. A committee of directors, exclusive of any active officers of the bank, must at least once during each calendar year and within fifteen months of the last audit, make suitable audits of the trust activities or cause suitable audits to be made by auditors responsible to the board of directors, and must ascertain whether the trust activities have been administered in accordance with law and sound fiduciary principles. The board of directors may instead of the periodic audit, adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with any action taken, must be noted in the minutes of the board of directors.

Uninvested or undistributed funds. Uninvested or undistributed funds held by a banking institution in a fiduciary capacity must not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. Each banking institution exercising fiduciary powers must adopt and follow written policies and procedures intended to ensure that the maximum rate of return available for trust-quality, short-term investments is obtained consistent with the requirements of the governing instrument or law. The policies and procedures must take into consideration all relevant factors, including the anticipated return that could be obtained while the cash remains uninvested or undistributed, the cost of investing the funds, and the anticipated need for the funds.

Self-dealing.

1. Funds held by a banking institution as fiduciary may not be invested in stock or obligations of, or property acquired from, the banking institution or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as affects the exercise of the best judgment of the banking institution in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the banking institution or their directors, officers, or employees, unless authorized by the instrument creating the relationship or as authorized by law.

2. Property held by a banking institution as fiduciary may not be sold or transferred, by loan or otherwise, to the banking institution or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as affects the exercise of the best judgment of the banking institution in selling or transferring the property, or to affiliates of the banking institution or their directors, officers, or employees except:

   a. As authorized by the instrument creating the relationship or as authorized by law;

   b. When the banking institution has been advised in writing by its counsel or auditor that it has incurred as a fiduciary a contingent or

potential liability and desires to relieve itself of that liability, a sale or transfer may be made with the approval of the board of directors, provided that the banking institution, upon consummation of the sale or transfer, makes reimbursement in cash at no loss to the account;

c. To purchase at market value, defaulted investment funds; or

d. Where ordered by the board.

3. Funds held by a banking institution as fiduciary may not be invested by the purchase of stock or obligations of the banking institution or its affiliates unless authorized by the instrument or as authorized by law. If the retention of stock or obligations of the banking institution or its affiliates is authorized by the instrument creating the relationship, by court order, or by law it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

4. A banking institution may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if the transaction is not prohibited by the terms of any governing instrument.

5. A banking institution may make a loan to an account from the funds belonging to another account when the making of a loan to a designated account is authorized by the instrument creating the account from which the loan is made.

6. A banking institution may make a loan to an account and may take as security for the loan, assets of the account provided the transaction is fair to the account.

Custody of investments.

1. The investment of each account must be kept separate from the assets of the banking institution, and must be placed in the joint custody or control of not less than two of the officers or employees of the banking institution designated for that purpose by the board of directors or by one or more officers designated by the board. The banking institution may permit the investments of a fiduciary account to be deposited elsewhere.

2. Except for commingled investments, the investments of each account must be kept separate from those of all other accounts, or adequately identified as the property of the relevant account.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 68

HOUSE BILL NO. 1171
(Industry, Business and Labor Committee)
(At the request of the Governor)

BANKING COMMISSIONER CONFIRMATION

AN ACT to amend and reenact section 6-01-08 of the North Dakota Century Code, relating to senate confirmation for the commissioner of the department of banking and financial institutions for an appointment made when the senate is not in session.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-08 of the North Dakota Century Code is amended and reenacted as follows:

6-01-08. Appointment of commissioner - Qualifications. The commissioner must be appointed by the governor and confirmed by the senate, and shall hold ~~his~~ office for a term of four years and until ~~his~~ a successor has been appointed, confirmed by the senate, and has qualified, unless ~~he~~ the commissioner is removed sooner as herein provided. ~~His~~ If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner's term of office commences on the first day of July in each year next following a national presidential election. The commissioner must be a skilled accountant, and may not be an incumbent of any other public office in the state, or in any county, municipality, or public institution thereof, and may not own, hold, or control any stocks, capital, or bonds, or hold the office of trustee, assignee, officer, agent, or employee of any financial institution under his jurisdiction, or of any corporation engaged in the business of guarantying or ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositaries. The governor may remove from office any commissioner who violates or fails to discharge faithfully the duties of ~~his~~ office or who becomes disqualified under the provisions of this section.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 69

HOUSE BILL NO. 1151
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

UNANNOUNCED BANK EXAMINATIONS

AN ACT to amend and reenact section 6-01-09 of the North Dakota Century Code, relating to unannounced examinations of banks and authority to examine bank holding companies and subsidiaries of banks under the commissioner's supervision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-09 of the North Dakota Century Code is amended and reenacted as follows:

6-01-09. Supervision and examination by commissioner of banking and financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions placed within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations and associations placed under the commissioner's jurisdiction at least once each thirty months to examine their affairs and ascertain their financial condition. ~~The visits must be made without previous notice to the corporation or institution to be examined.~~ The commissioner shall inspect and verify the assets and liabilities of the institution to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions, and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether such methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing such corporations and institutions, and for such purpose the commissioner may examine the officers, agents, and employees of such corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner shall report the condition of such corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as, in its discretion, the exigencies may demand.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 70

HOUSE BILL NO. 1177
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

REAL ESTATE LOANS AND APPRAISALS

AN ACT to amend and reenact sections 6-03-05 and 6-03-08 of the North Dakota Century Code, relating to real estate loans, limitations, and appraisals of real estate loans and other real estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-05. Loans on real estate - Regulation - Limitation. ~~No association may own or carry among its assets at any one time loans dependent primarily upon real estate security in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of sixty-six and two-thirds percent of the amount of its nontransaction deposits, whichever is the greater.~~ Before any ~~such~~ real estate loan in excess of one hundred thousand dollars is made an appraisal must be conducted by a licensed or certified appraiser ~~if~~ as required by ~~federal law~~ the Federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.] or, if not so required, by an individual or appraisal committee who is independent of the transaction. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. No unamortized loan secured by realty may be made for a period exceeding five years ~~in an amount exceeding~~ and may not exceed fifty percent of the appraised value of the real estate offered as security.

Any ~~such~~ amortized real estate loan may be made in an amount not to exceed ninety percent of the appraised value of the real estate offered as security unless the amount above this limitation is government guaranteed or insured by a private mortgage loan within a period of not more than thirty years.

SECTION 2. AMENDMENT. Section 6-03-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-08. Powers as to other real estate. Every state banking association has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:

1. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.

2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.

3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association, or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted ~~by a licensed or certified appraiser if required by federal law, or if not so required,~~ by an individual who is independent of the transaction.

Approved March 22, 1993
Filed March 22, 1993

CHAPTER 71

HOUSE BILL NO. 1173
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

BANK INVESTMENTS IN FIXED ASSETS

AN ACT to amend and reenact section 6-03-07 of the North Dakota Century Code, relating to a banking association investment in fixed assets to include equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-07 of the North Dakota Century Code is amended and reenacted as follows:

6-03-07. Investment in banking facility, furniture, and fixtures - Limitation. No state banking association may invest more than one hundred percent of the amount of its unimpaired capital stock and surplus in a banking facility, furniture, ~~and~~ fixtures, and equipment without the approval of the state banking board.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 72

SENATE BILL NO. 2449
(Senators Wogsland, Lips)

INVESTMENTS

AN ACT to create and enact a new subsection to section 6-03-47.2 of the North Dakota Century Code, relating to investments by banks; to amend and reenact sections 6-03-38, 10-30.2-11, 10-30.2-12, 10-30.2-13, 10-30.2-13.1, 10-30.2-13.2, subsection 4.2 of section 57-38-01, subdivision s of subsection 1 of section 57-38-01.2, and subsections 3 and 4 of section 57-38-30.3 of the North Dakota Century Code, relating to investments by banks, tax credits for investments in small business investment companies, the definition of a qualified investment fund, an exemption from income tax liability for distribution of a qualified investment fund, an exclusion from computation of income tax liability of distributions from a qualified investment fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

[1] **6-03-38. Assets not to be used in other business - Exceptions - Penalty.** No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association~~, provided, however, that~~. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase voting common stock of Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04, or purchase shares of stocks ~~in~~, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, ~~85th Congress,~~ known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et. seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold ~~shares in~~ securities of small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules ~~and regulations~~ for the subsidiary corporations, and to examine

[1] NOTE: Section 6-03-38 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

its records and affairs, as it has for other financial corporations under ~~the provisions of~~ section 6-01-04. ~~In the event that~~ If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition ~~to the above~~, the state banking board has power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to ~~the provisions of~~ this title is guilty of a class A misdemeanor.

SECTION 2. A new subsection to section 6-03-47.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Investments, in either equity or debt instruments or securities, offered by small business investment companies organized and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], and the Small Business Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto.

SECTION 3. AMENDMENT. Section 10-30.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **10-30.2-11. Tax credits for investment by banks, savings and loan associations, trust companies, and insurance companies.** A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years.

SECTION 4. AMENDMENT. Section 10-30.2-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[2] NOTE: Section 10-30.2-11 was also amended by section 5 of Senate Bill No. 2222, chapter 92.

[3] **10-30.2-12. Income tax credits for investment.** A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 5. AMENDMENT. Section 10-30.2-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-13. Limitation on tax credits. The state tax commissioner shall allow tax credits pursuant to sections 10-30.2-11 and 10-30.2-12 which are attributable to not more than the first ten million dollars of total investment in the corporation or in an affiliate of the corporation, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto. However, the total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning January 1, 1989, and ending December 31, 1990, is one million two hundred fifty thousand dollars. If investments reported to the state tax commissioner pursuant to section 10-30.2-13.1 exceed the ten million dollar limitation imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in either the corporation or an affiliate of the corporation or a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, as determined from the forms provided for in section 10-30.2-13.1.

SECTION 6. AMENDMENT. Section 10-30.2-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-13.1. Investment reporting forms. Within thirty days of the date on which an investment is purchased, or within sixty days from July 1, 1989, the

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[3] NOTE: Section 10-30.2-12 was also amended by section 6 of Senate Bill No. 2222, chapter 92.

corporation ~~or~~, an affiliate of the corporation, or a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, must file with the state tax commissioner and provide to the investor the completed form prescribed by the state tax commissioner stating with respect to the investment in the corporation or an affiliate of the corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment.

2. The dollar amount paid by the taxpayer for the investment.

3. The date on which the corporation or an affiliate of the corporation received full consideration for the investment.

SECTION 7. AMENDMENT. Section 10-30.2-13.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-13.2. Tax credit procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual tax return in the manner prescribed by the state tax commissioner and file with that tax return a copy of the form issued by the corporation ~~or~~, an affiliate of the corporation, or a small business investment company created by the corporation and licensed by the Small Business Administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et. seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et. seq.], and any amendments thereto, pursuant to section 10-30.2-13.1.

SECTION 8. AMENDMENT. Subsection 4.2 of section 57-38-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4.2. "Qualified investment fund" means any ~~investment company or trust registered with the securities and exchange commission, or any segregated portfolio of assets of such a company or trust~~ regulated investment company as defined under the Internal Revenue Code, which for the calendar year in which the distribution is paid:

a. Has investments ~~limited to~~ in interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or ~~any instrumentality of~~ the United States government; and

b. Has~~, within thirty days after the close of the calendar year, provided to shareholders and~~ provided the tax commissioner with a detailed schedule of ~~allocation of its assets and its sources of income showing that it is a qualified investment fund; and~~ the assets contained in its investment portfolio and a schedule of the income attributable to each asset in its investment portfolio for the calendar year.

~~c. Has, within thirty days after the close of the calendar year, provided to each shareholder a statement of the amount of distributions earned by the shareholder in the calendar year which are attributable to income from obligations issued by or on behalf of this state, any~~

~~political subdivision of this state, or any instrumentality of the United States government.~~

SECTION 9. AMENDMENT. Subdivision s of subsection 1 of section 57-38-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

s. Reduced by the ~~amount~~ portion of ~~any~~ a distribution from a qualified investment fund described in ~~subdivision c of~~ subsection 4.2 of section 57-38-01 ~~received from a qualified investment fund~~ that is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions; provided the amount of the distribution excluded under this subdivision is included in federal taxable income.

SECTION 10. AMENDMENT. Subsections 3 and 4 of section 57-38-30.3 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. ~~Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision c of subsection 4.2 of section 57-38-01 from a qualified investment fund~~ To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:

   a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

   b. The portion of a distribution from a qualified investment fund described in subsection 4.2 of section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

4. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. ~~Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision c of subsection 4.2 of section 57-38-01 from a qualified investment fund~~

To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:

a. Interest income from obligations of the United States and income exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

b. The portion of a distribution from a qualified investment fund described in subsection 4.2 of section 57-38-01 which is attributable to investments by the qualified investment fund in obligations of the United States, obligations of North Dakota or its political subdivisions, and any other obligation the interest from which is exempt from state income tax under federal statute or United States or North Dakota constitutional provisions.

SECTION 11. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 73

HOUSE BILL NO. 1154
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

BANK BORROWING REPORT

AN ACT to amend and reenact section 6-03-53 of the North Dakota Century Code, relating to a banking association's report of borrowings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-53 of the North Dakota Century Code is amended and reenacted as follows:

6-03-53. Borrowing and rediscounting - Report required. Whenever a state banking association borrows money or rediscounts with recourse such association shall immediately make a full written report of the transaction to the commissioner upon the commissioner's request, which report must include a full description of all collateral security given or to be given by such association for the credit obtained. ~~Whenever it appears to the commissioner that any association is borrowing money or rediscounting its paper with recourse for the purpose of making or carrying speculative loans or investments or that the association is in an extended or unsound condition, the commissioner after reasonable notice and an opportunity for a hearing may by written order to the association require it to discharge its liability for borrowed money or on rediscounted paper either in full or to such extent as the order may specify. If the association so notified fails to comply with such order within thirty days of the receipt thereof, it shall thereafter cease to make any new loans or investments until such order has been complied with, and any director, officer, or employee of the association who authorizes or in any way participates in the making of any new loan or investment in violation of the provisions of this section is personally liable to the association for all losses sustained by it in connection with any such new loan or investment.~~

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 74

SENATE BILL NO. 2209
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

CREDIT UNION ACCOUNT INSURANCE

AN ACT to amend and reenact subsection 4 of section 6-06-02 of the North Dakota Century Code, relating to maintaining national credit union administration insurance of accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-06-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The applicants shall apply for ~~and~~, secure, and maintain national credit union administration insurance of accounts.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 75

HOUSE BILL NO. 1211
(Finance and Taxation Committee)
(At the request of the Office of Management and Budget)

SECRETARY OF STATE FEES

AN ACT to amend and reenact subsection 6 of section 6-06-02, sections 6-06-04, 6-06-36, 6-08-26, subsections 3 and 4 of section 10-15-36, sections 10-15-54, 10-23-02, 10-23-04, 10-23-05, 10-23-06, 10-23-07, 10-28-01, 10-28-02, 43-07-07, 44-06-02, 45-10.1-15, 45-11-01, subsection 1 of section 54-05.1-03, and section 54-09-04 of the North Dakota Century Code, relating to fees collected by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-06-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. The commissioner shall notify the applicants and the state credit union board of his decision, and if it is favorable, the board shall instruct the secretary of state to issue a charter, which must be attached to the certificate of organization and returned, together with the bylaws, to the applicants upon payment of a filing fee of ~~five~~ thirty dollars to the secretary of state.

SECTION 2. AMENDMENT. Section 6-06-04 of the North Dakota Century Code is amended and reenacted as follows:

6-06-04. Amendment of certificate or bylaws - Approval by state credit union board. The certificate of organization or bylaws of a credit union may be amended by the board of directors or the membership of the credit union as specified in the bylaws. If the bylaws provide for amendments by the board of directors, such amendments require an affirmative vote of two-thirds of the authorized number of members of the board of directors of the credit union at any duly held meeting of the board, if the members of the board have been given prior written notice of said meeting and the notice contains a copy of the proposed amendment or amendments. If the bylaws provide for amendments by the membership of the credit union, such amendments require an affirmative vote of two-thirds of the members present and voting at a duly called regular or special meeting of the membership, providing the members have been given prior written notice of said meeting and the notice contains a copy or summary of the proposed amendment or amendments. No amendment of the bylaws or of the certificate of organization becomes effective, until approved in writing by the state credit union board. Amendments to the certificate of organization together with a filing fee of twenty dollars must be filed with the secretary of state within thirty days after the amendments have been approved by the state credit union board.

SECTION 3. AMENDMENT. Section 6-06-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-36. Merger. Any credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

SECTION 4. AMENDMENT. Section 6-08-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-26. Requirements of foreign bank or trust company serving as fiduciary in state. Before qualifying or serving in this state in any fiduciary capacity as defined in section 6-08-25, such bank or trust company shall file in the office of the secretary of state a filing fee of ~~twenty-five~~ fifty dollars, a copy of its charter certified by its secretary, and a power of attorney designating the said secretary of state or his successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which such bank or trust company is acting in any fiduciary capacity with like effect as personal service on such bank or trust company. Such power of attorney is irrevocable so long as any such liability remains outstanding against such bank or trust company in this state. Upon receipt of such notice or process with a filing fee of twenty-five dollars, it is the duty of the said secretary of state forthwith to forward the same by registered or certified mail to such bank or trust company at the address stated in the said power of attorney, and such bank or trust company shall comply with the provisions of chapter 6-05, insofar as the provisions of said chapter pertain to banks or trust companies.

[1] **SECTION 5. AMENDMENT.** Subsections 3 and 4 of section 10-15-36 of the North Dakota Century Code are amended and reenacted as follows:

3. The annual report shall be delivered to the secretary of state between January first and March thirty-first of each year following incorporation. A fee of ~~ten~~ twenty dollars shall be paid to the secretary of state for filing the report. If the report does not conform to requirements, it shall be returned to the cooperative for necessary corrections. The penalties for failure to file such report shall not apply if it is corrected and returned within thirty days after receipt thereof. The secretary of state may extend the filing date for the annual report of any cooperative whenever ~~in his discretion he~~ the secretary of state considers such an extension of time advisable and proper.

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[1] NOTE: Section 10-15-36 was also amended by section 3 of House Bill No. 1508, chapter 88.

4. Any report filed after March thirty-first may be filed only upon payment to the secretary of state of the following fees:

   a. If filed prior to May first, ~~fifteen~~ twenty-five dollars.

   b. If filed thereafter but not later than the following December first, ~~twenty-five~~ thirty-five dollars.

SECTION 6. AMENDMENT. Section 10-15-54 of the North Dakota Century Code is amended and reenacted as follows:

10-15-54. Fees. No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, ~~twenty-five~~ thirty dollars.

2. Filing articles of amendment and issuing a certificate of amendment, ~~twenty-five~~ twenty dollars.

3. Filing restated articles of association, ~~twenty-five~~ thirty dollars.

4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~twenty-five~~ fifty dollars.

5. Filing articles or decree of dissolution, ~~seven~~ twenty dollars ~~and fifty cents~~.

6. Receiving service of any process, notice, or demand, ~~ten~~ twenty-five dollars.

7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, ~~thirty-seven~~ forty dollars ~~and fifty cents~~.

8. Filing any other document or statement, or issuing any other certificate, ~~ten~~ twenty dollars.

SECTION 7. AMENDMENT. Section 10-23-02 of the North Dakota Century Code is amended and reenacted as follows:

10-23-02. Filing of annual report of domestic corporation - Penalty for late filing. The annual report for the preceding year of a domestic corporation shall be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation shall be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation was issued by the secretary of state. Proof to the satisfaction of the secretary of state that on or before the first day of August, such report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of section 10-23-01, the report shall be filed. If the report does not so conform, it shall be returned to the

corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline.

Each domestic corporation that fails or refuses to file its annual report for any year within the time prescribed by this section shall be subject to a penalty of twenty dollars if filed within ninety days after the due date, or ~~fifty~~ sixty dollars if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law.

SECTION 8. AMENDMENT. Section 10-23-04 of the North Dakota Century Code is amended and reenacted as follows:

10-23-04. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing restated articles of incorporation, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~thirty~~ fifty dollars.
5. Filing an application to reserve a corporate name, ten dollars.
6. Filing a notice of transfer of a reserved corporate name, ten dollars.
7. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
8. Filing statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
9. Filing a registered agent's consent to serve in such capacity, ten dollars.
10. Filing a resignation as registered agent, ten dollars.
11. Filing a statement of the establishment of a series of shares, twenty dollars.
12. Filing a statement of cancellation of shares, twenty dollars.
13. Filing a statement of reduction of stated capital, twenty dollars.
14. Filing a statement of intent to dissolve, ten dollars.

15. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

16. Filing articles of dissolution, twenty dollars.

17. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.

18. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.

19. Filing a certificate of fact stating a merger of a foreign corporation holding a certificate of authority to transact business in this state, ~~twenty~~ fifty dollars.

20. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.

21. Filing annual report of domestic corporation, ~~twenty~~ twenty-five dollars; of foreign corporation, ~~twenty~~ twenty-five dollars; any other statement or report of either, ~~ten~~ twenty dollars.

22. Filing any process, notice, or demand for service, ~~twenty~~ twenty-five dollars.

23. Filing articles of abandonment of merger, ~~thirty~~ fifty dollars.

24. Filing a consent to use of name, ten dollars.

SECTION 9. AMENDMENT. Section 10-23-05 of the North Dakota Century Code is amended and reenacted as follows:

10-23-05. Miscellaneous charges. The secretary of state shall charge and collect for furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages, or fraction thereof, and ~~ten~~ fifteen dollars for the certificate and affixing the seal ~~thereto~~ to the certificate.

SECTION 10. AMENDMENT. Section 10-23-06 of the North Dakota Century Code is amended and reenacted as follows:

10-23-06. License fees payable by domestic corporations - Exempting building and loan and savings and loan associations. The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.

2. Filing articles of amendment increasing the number or value of authorized shares.

3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or

value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of fifty dollars for the first fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value shall be considered worth ~~ten cents~~ one dollar per share.

The provisions of this section shall not apply to a building and loan or savings and loan association.

SECTION 11. AMENDMENT. Section 10-23-07 of the North Dakota Century Code is amended and reenacted as follows:

10-23-07. License fees payable by foreign corporation. The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state, the sum of ~~seventy-five~~ eighty-five dollars as an initial license fee.

Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:

1. He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the law if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed report.

2. Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

3. From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation, and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its ~~registered~~ principal office ~~in this state~~. The additional license fee shall be paid by the corporation to the

secretary of state within thirty days after the mailing of the notice. Amounts less than five dollars may not be collected.

SECTION 12. AMENDMENT. Section 10-28-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-28-01. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~thirty~~ fifty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of dissolution, twenty dollars.
6. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
7. Filing a registered agent's consent to serve in that capacity, ten dollars.
8. Filing a resignation as registered agent, ten dollars.
9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.
12. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
13. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, ~~twenty~~ fifty dollars.
14. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
15. Filing any other statement or report of a domestic or foreign corporation, twenty dollars.
16. Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 13. AMENDMENT. Section 10-28-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-28-02. Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and ~~ten~~ fifteen dollars for the certificate and affixing the seal thereto.

2. At the time of any service of process on him as resident agent of a corporation, ~~twenty~~ twenty-five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SECTION 14. AMENDMENT. Section 43-07-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-07. License fees. At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of ~~two~~ three hundred ~~fifty~~ dollars.

2. For a class B license, the sum of ~~one~~ two hundred ~~fifty~~ dollars.

3. For a class C license, the sum of one hundred fifty dollars.

4. For a class D license, the sum of fifty dollars.

All moneys collected by the registrar under this chapter shall be deposited by him with the state treasurer, who shall credit them to the general fund of the state.

SECTION 15. AMENDMENT. Section 44-06-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state which shall be posted by such notary in a conspicuous place in his office. The secretary of state shall collect ~~twenty~~ twenty-five dollars for the issuance of such commission. Such sum shall be paid into the state treasury and credited to the general fund. The secretary of state shall keep in his office a record of such appointments and the date of the expiration of the same, and shall notify each notary public by mail at least thirty days before the expiration of his term of the date upon which his commission will expire. Such notice shall be addressed to such notary public at his last known place of residence.

SECTION 16. AMENDMENT. Section 45-10.1-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-15. Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, ~~seventy-five~~ one hundred dollars.

2. Filing a limited partnership amendment, ~~twenty-five~~ forty dollars.

3. Filing a limited partnership dissolution, twenty-five dollars.

4. Filing a limited partnership cancellation, twenty-five dollars.

5. Filing a reservation of name, ten dollars.

6. Filing a statement of renewal of a limited partnership or renewal of registration of foreign limited partnership, ~~twenty-five~~ forty dollars.

7. Filing a registration of foreign limited partnership, ~~seventy-five~~ one hundred dollars.

8. Filing a certified statement of amendment of foreign limited partnership, twenty-five dollars.

9. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.

10. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.

11. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.

12. Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 17. AMENDMENT. Section 45-11-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **45-11-01. Use of fictitious partnership name.** Any partnership transacting business in this state under a fictitious name or under a designation that does not show the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred and fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.1 and as provided in section 45-11-03 is not required to file a fictitious name certificate under this section. The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".

2. May not be the same as or deceptively similar to any corporate name, trade name, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

[3] **SECTION 18. AMENDMENT.** Subsection 1 of section 54-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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[2] NOTE: Section 45-11-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

[3] NOTE: Section 54-05.1-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

1. Any person who shall engage himself or be engaged by any other person either on a part-time or on a full-time basis for any of the activities listed in section 54-05.1-02, shall, before doing anything in furtherance of such purposes, register with the secretary of state and receive a certificate of registration and a distinctive lobbyist identification badge. The registrant shall state in writing his full name and business address, the name and address of the person or persons upon whose behalf he appears, all persons, corporations, associations, groups, or organizations in whose interest he appears or works, the duration of such employment or appearances, and by whom he is paid or is to be paid. The registration expires on December thirty-first of each calendar year unless an earlier expiration date is requested by the registrant. Lobbyists required to be registered shall file with the secretary of state, within ten days of registration, a written authorization to act as lobbyist. Such authorization must be signed by the person or official of the corporation, association, group, or organization employing such lobbyist. The secretary of state shall charge a fee of ~~ten~~ twenty dollars for registering each lobbyist.

SECTION 19. AMENDMENT. Section 54-09-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-04. Fees. The secretary of state, ~~for services performed in his office,~~ unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in ~~his~~ the secretary of state's office, one dollar for every four pages or fraction thereof.

2. For affixing ~~his~~ the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ~~five~~ ten dollars.

3. For filing a certificate of appointment of attorney, five dollars.

4. For any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.

5. For searching records and archives of the state, five dollars.

6. For filing any paper not otherwise provided for, ~~five~~ ten dollars.

7. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.

8. For sending a copy of a document by electronic transmission, one dollar for each page.

9. For filing any process, notice, or demand for service, twenty dollars.

10. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

No member of the legislative assembly, and no state or county officer may be charged for any search relative to matters appertaining to duties of ~~his~~ office, nor ~~may he~~ be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to ~~his~~ the person's official duties. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by statute, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 76

SENATE BILL NO. 2341
(Senators Krauter, Mutch)

CREDIT UNION VOTING AND RESERVES

AN ACT to amend and reenact sections 6-06-10 and 6-06-21 of the North Dakota Century Code, relating to voting by mail by credit union members and reserve requirements for corporate central credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-10 of the North Dakota Century Code is amended and reenacted as follows:

6-06-10. General and special meetings - Notice - Quorum - Voting privileges. General and special meetings may be held in the manner and for the purposes indicated in the bylaws of the credit union. Ten days before any regular or special meeting, written notice thereof must be mailed to each member, and, in the case of a special meeting, the notice must state clearly the purpose of the meeting and what matters will be considered thereat. The members present at a general or special meeting constitute a quorum for the transaction of the business of the credit union. At all meetings, a member has but a single vote, whatever ~~his~~ the member's share holdings. There is no voting by proxy, but any firm, society, or corporation having a membership in the credit union may cast its vote by one person upon presentation by him to the credit union of written authority from such firm, society, or corporation. The credit union may allow members to vote by mail ballot for directors and committee members.

SECTION 2. AMENDMENT. Section 6-06-21 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21. Reserve fund - Amount required and how raised. Every credit union, ~~except~~ including corporate central credit unions, shall maintain a reserve fund in accordance with the rules of the national credit union administration to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon liquidation.

~~Every corporate central credit union shall maintain a reserve fund to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon liquidation. At the end of each fiscal year, the corporate central credit union shall transfer to the reserve fund two percent of gross earnings until the reserve fund equals one and one-half percent of total assets. Thereafter, there must be added annually to the reserve fund at the end of each fiscal year the contribution amounts or the percentage of the gross earnings of the corporate central credit union, not to exceed two percent of gross earnings, required to maintain its reserve fund at one and one-half percent of total assets.~~

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 77

HOUSE BILL NO. 1152
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

BANKING INSTITUTION SALE

AN ACT to amend and reenact section 6-08-08.1 of the North Dakota Century Code, relating to the sale or purchase of a banking institution or association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-08.1 of the North Dakota Century Code is amended and reenacted as follows:

[1] **6-08-08.1. Sale or purchase of associations, banking institutions, or holding companies - Notification to commissioner - Hearing.**

1. No person, acting directly or indirectly or through or in concert with one or more other persons, may sell or otherwise dispose of an association, or banking institution, or purchase or otherwise acquire control of an association or banking institution unless the state banking board has been given ~~at least sixty days~~ prior written notice by application of the proposed disposition or acquisition. The written ~~notice~~ application must include such information as the state banking board shall specify. The transaction may not be consummated before the board has granted approval.

2. The applicant shall publish notice of the application as required by the board by rule.

~~2.~~ 3. Within ten business days after the date ~~of mailing~~ the ~~notification~~ application is received the commissioner shall determine if the application ~~as filed~~ is complete and notify the applicant by mail of the determination. If the commissioner determines the application is incomplete the commissioner will, within the ten business days, request additional information deemed necessary to complete the application. Within ten business days after the receipt of the additional information, the commissioner will notify the applicant by mail of the commissioner's determination of completeness. Within ~~thirty~~ sixty days after the mailing of a notice of completeness by the commissioner, ~~the transaction is deemed approved, unless~~ the board ~~issues an order calling a hearing. If a hearing is called by the board, the parties to the transaction must be given at least a ten-day written notice of the time, date, and place of the hearing, to be held before the board, to examine into the following matters:~~ must either approve or disapprove the application.

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[1] NOTE: Section 6-08-08.1 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

4. The board may disapprove any application if the board determines that:

   a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.

   b. ~~Whether~~ The qualifications of management do not include adequate experience with financial institutions or other approved related experience.

   ~~c. Whether the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.~~

~~The determination to call a hearing may be made by the commissioner after consulting the board members and an order calling a hearing may be issued by the board without a formal meeting.~~

~~3. If the evidence produced at the hearing establishes that the character, reputation, general fitness, financial standing, and responsibility of the persons proposed as stockholders, directors, or officers is such that the interests of other stockholders, depositors, creditors, and the general public might be jeopardized by the change in control and management, then the board, within ten business days of the date of the hearing, shall issue its order disapproving the transaction and shall notify the parties. If no order is issued within ten business days after the hearing is held, the transaction is deemed approved by the board. Any decision of the board is reviewable under the provisions of chapter 28-32.~~

5. Within three business days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

6. Within twenty days after receipt of the notice of disapproval, the applicant may request a hearing on the disapproval. The board must conduct a hearing, if requested, under the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record at the hearing.

~~4.~~ 7. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of an association, banking institution, controlling holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. "Holding company"

means any partnership, corporation, business trust, association, or entity or organization of any type which controls an association or banking institution.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 78

HOUSE BILL NO. 1410
(Representatives Maragos, Christopherson, Kilichowski)

BAD CHECKS

AN ACT to amend and reenact section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check without an account or with insufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-16.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:

   a. "Account" means any account at a bank or depository from which an instrument could legally be paid.

   b. "Dishonor" is synonymous with "nonpayment".

   c. "Instrument" means any check, draft, or order for the payment of money.

   d. "Issues" means draws, utters, or delivers.

2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:

   a. At the time of issuing the instrument ~~with intent to defraud,~~ the drawer does not have an account with the bank or depository on which the instrument is drawn; or

   b. At the time of issuing the instrument ~~with intent to defraud,~~ or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

   The person is also liable for collection fees or costs, not in excess of fifteen dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:

   a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or

   b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

   The person is also liable for collection fees or costs, not in excess of fifteen dollars, which are recoverable by civil action by the holder of the instrument.

4. A civil penalty is also recoverable by civil action by the holder of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.

5. ~~The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made constitutes an inference of intent to defraud.~~

~~6.~~ An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.

~~7.~~ 6. A notice of dishonor may be mailed by the holder of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____
Name of Issuer _____
Street Address _____
City and State _____
You are according to law hereby notified that an instrument dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the

drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____
(Holder)
sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of fifteen dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 79

HOUSE BILL NO. 1114
(Agriculture Committee)
(At the request of the Bank of North Dakota)

BEGINNING FARMER LOAN PROGRAM

AN ACT to amend and reenact subdivision c of subsection 1 of section 6-09-15 and subsections 3 and 4 of section 6-09-15.5 of the North Dakota Century Code, relating to the appraised value of real estate securing a loan and interest rates for loans to beginning farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 6-09-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed ~~seventy~~ eighty percent of the value of the security.

SECTION 2. AMENDMENT. Subsections 3 and 4 of section 6-09-15.5 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A loan made from the fund may not exceed ~~seventy~~ eighty percent of the appraised value of the agricultural real estate to be acquired with the loan proceeds, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and may establish additional terms and conditions as deemed necessary to make a loan under this section. The Bank shall take a first mortgage as security for a loan from the fund.

4. A loan made from the fund must ~~bear interest at a maximum rate of six percent per year on the first five years of the loan and eight percent per year the next five years~~ have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year and fixed again at one percent below the Bank's then current base rate for the next five years with a maximum rate of eight percent per year. For the remaining period of the loan, interest must be charged and may float at the Bank's base rate as in effect from time to time.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 80

HOUSE BILL NO. 1400
(Representatives Keiser, Kempenich, Rydell)
(Senators DeMers, Maxson, Nelson)

PARKS AND RECREATION AND TOURISM DEPARTMENTS

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to the establishment of a tourism department; to amend and reenact subdivision g of subsection 1 of section 6-09-15, subsection 3 of section 10-06-04.3, sections 24-02-37.1, 24-03-21, subdivision o of subsection 1 of section 28-32-01, section 37-03-14, paragraph 7 of subdivision a of subsection 2 of section 39-01-01, section 39-24-05, subsection 3 of section 39-24-08, sections 39-24-09.1, 39-24-11, 39-29-01.1, subsection 2 of section 39-29-05, subsection 3 of section 39-29-08, sections 39-29-10, 39-29-12, 55-08-01.1, 55-08-01.2, 55-08-01.3, 55-08-02.1, subsection 1 of section 55-08-03.1, sections 55-08-07, 55-08-07.1, 55-08-07.2, 55-08-08, 55-08-09, 55-08-10, 55-08-11, 55-08-12, 55-08-13, 55-08-14.1, 55-10-04, subsection 3 of section 55-11-02, section 57-02-08.7, subsection 6 of section 57-39.2-28, section 61-29-04, and subsection 1 of section 61-33-09 of the North Dakota Century Code, relating to the parks and tourism department and the allocation of powers and duties to the parks and recreation department or the tourism department; and to repeal sections 55-08-01.4, 55-08-01.5, and 55-08-01.6 of the North Dakota Century Code, relating to the tourism division of the parks and tourism department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 6-09-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and ~~tourism~~ recreation department.

[1] **SECTION 2. AMENDMENT.** Subsection 3 of section 10-06-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first

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[1] NOTE: Section 10-06-04.3 was also repealed by section 107 of Senate Bill No. 2223, chapter 54.

submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

SECTION 3. AMENDMENT. Section 24-02-37.1 of the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the director of the game and fish department, the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department, the director of the department of economic development and finance, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. The commissioner shall provide staff services to the committee. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 4. AMENDMENT. Section 24-03-21 of the North Dakota Century Code is amended and reenacted as follows:

24-03-21. Preparation of road maps - Publication of tourist information. The commissioner shall prepare for general distribution, road maps of the state highway system and other roads as the commissioner determines necessary. Any tourist-oriented material printed on road maps must be prepared by the tourism ~~division of the parks and tourism~~ department at no cost to the department of transportation.

[2] **SECTION 5. AMENDMENT.** Subdivision o of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

o. The parks and ~~tourism~~ recreation department.

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[2] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1264, 1336, and Senate Bill Nos. 2215 and 2228, chapters 135, 186, 328, 327, 173, and 236.

SECTION 6. AMENDMENT. Section 37-03-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **37-03-14. North Dakota veterans' cemetery - Administration.** The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort Abraham Lincoln state park. The adjutant general may accept and utilize private and federal funds to establish and operate the veterans' cemetery. All moneys received from private or federal sources must be paid into a veterans' cemetery maintenance fund. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard, other reserve components, and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

SECTION 7. AMENDMENT. Paragraph 7 of subdivision a of subsection 2 of section 39-01-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

(7) Vehicles operated by or under the control of the director of the North Dakota parks and ~~outdoor~~ recreation ~~sites division~~ department.

SECTION 8. AMENDMENT. Section 39-24-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[4] **39-24-05. Disposition of registration fees.** Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. The parks and ~~tourism~~ recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities.

SECTION 9. AMENDMENT. Subsection 3 of section 39-24-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The director of the parks and ~~outdoor~~ recreation ~~sites division~~ department shall adopt rules for regulating use of snowmobiles in state parks and other state-owned land under the supervision of the director.

SECTION 10. AMENDMENT. Section 39-24-09.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[3] NOTE: Section 37-03-14 was also amended by section 1 of Senate Bill No. 2168, chapter 360.

[4] NOTE: Section 39-24-05 was also amended by section 1 of Senate Bill No. 2120, chapter 397.

39-24-09.1. Operation by persons under age sixteen. Except as otherwise provided in this section, it is unlawful for any person twelve years of age and over who has not reached sixteen years of age and who is not in possession of a valid driver's license or permit to operate a snowmobile, except upon the lands of the person's parent or guardian, unless and until the person has completed a snowmobile safety training course as prescribed by the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the commissioner. The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce this chapter is presumptive evidence that the person is not the holder of the certificate. Fees collected from each person receiving certification must be deposited into the snowmobile trail tax fund for purposes of establishing snowmobile safety programs.

SECTION 11. AMENDMENT. Section 39-24-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[5] **39-24-11. Penalties.** Any person who violates subdivision b, c, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of twenty-five dollars. A person who operates an unregistered snowmobile on land owned, leased, or managed by the parks and ~~tourism~~ recreation department must be assessed a fee of fifty dollars; however, if the person provides proof of registration since the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

SECTION 12. AMENDMENT. Section 39-29-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee. Upon the sale of an all-terrain vehicle, each dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and ~~tourism~~ recreation department which discloses the number of all-terrain vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the all-terrain vehicle fund established under subsection 2 of section 39-29-05. The fees may be used only by the parks and ~~tourism~~ recreation department and only for all-terrain vehicle safety education and promotion.

SECTION 13. AMENDMENT. Subsection 2 of section 39-29-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The all-terrain vehicle trail tax must be deposited in a state fund in the state treasury. The parks and ~~tourism~~ recreation department may, on appropriation by the legislative assembly, expend from that fund moneys

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[5] NOTE: Section 39-24-11 was also amended by section 1 of Senate Bill No. 2123, chapter 398.

for establishing all-terrain vehicle facilities, all-terrain vehicle use areas, and all-terrain vehicle safety and education programs.

SECTION 14. AMENDMENT. Subsection 3 of section 39-29-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The director of the parks and ~~outdoor~~ recreation ~~sites division~~ department shall adopt rules to regulate use of all-terrain vehicles in state parks and other state-owned land under the supervision of the director.

SECTION 15. AMENDMENT. Section 39-29-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-29-10. Operation by persons under age sixteen. Except as otherwise provided in this section, a person under sixteen years of age who is not in possession of a valid operator's license or permit to operate an all-terrain vehicle may not, except upon the lands of the person's parent or guardian, operate an all-terrain vehicle. A person at least twelve years of age may operate an all-terrain vehicle if the person has completed an all-terrain vehicle safety training course prescribed by the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department and has received the appropriate all-terrain vehicle safety certificate issued by the commissioner. The failure of an operator to exhibit an all-terrain vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold such a certificate. Fees collected from each person receiving certification must be deposited in the all-terrain vehicle trail tax fund for all-terrain vehicle safety education and training programs.

SECTION 16. AMENDMENT. Section 39-29-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[6] **39-29-12. Penalties.** Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 is an infraction, for which a fee of twenty-five dollars must be assessed; however, if the violation occurs on land owned, leased, or managed by the parks and ~~tourism~~ recreation department a fee of fifty dollars must be assessed. If the person provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

SECTION 17. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Tourism department - Director.

1. The tourism department is established to foster and promote tourism to, and within, the state and the full development of the state's tourism resources, and to serve as a planning and coordinating agency for

[6] NOTE: Section 39-29-12 was also amended by section 1 of Senate Bill No. 2122, chapter 400.

tourism-related programs of the state and the state's political subdivisions.

2. The governor shall appoint a director of the tourism department who shall serve at the will of the governor. The director shall supervise and control the tourism department.

Duties of director. The director of the tourism department, within the limits of legislative appropriations, shall:

1. Implement the state's tourism policy;

2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division;

3. Measure and forecast visitor volume, receipts, and related social and economic impacts;

4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks;

5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means. Those means may include:

   a. Display advertising in magazines and newspapers;

   b. Advertising on radio and television or other advertising media;

   c. Publishing pamphlets, brochures, and other graphic and pictorial materials; and

   d. Aiding and assisting representatives of the media to ensure greater coverage of the state's visitor attractions;

6. Participate in travel shows;

7. Supervise and administer visitor information centers that receive funding from the state;

8. Develop opportunities for professional and technical education and training in the visitor industry;

9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;

10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;

11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and

12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their

actions on travel to, and within the state, and if necessary recommend programs or policy changes to those agencies.

State tourism policy.

1. The legislative assembly declares that:

   a. This state is endowed with scenic beauty, historical sites, cultural resources, local festivals, attractions, recreational facilities, and a population whose ethnic diversity and traditions are attractive to visitors;

   b. These human and physical resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the state's residents;

   c. Tourism contributes to economic well-being by creating job opportunities, generating revenues for local businesses, and creating new wealth in the economy;

   d. Tourism is an educational and informational medium for personal growth which informs residents about their state's geography and history, their political institutions, their cultural resources, their environment, and about each other;

   e. Tourism instills state pride and a sense of common interest among the state's residents;

   f. Tourism enhances the quality of life and well-being of the state's residents by affording opportunities for recreation, new experiences, and relief from job stress;

   g. Tourism promotes international understanding and good will, and contributes to intercultural appreciation;

   h. Tourism engenders appreciation of the state's cultural, architectural, technological, agricultural, and industrial achievements;

   i. The development and promotion of tourism to and within the state is in the interest of the people of this state;

   j. Tourism should develop in an orderly manner in order to provide the maximum benefit to the state and its residents;

   k. The development of a strong and competitive state visitor industry depends upon the availability of trained personnel, necessary infrastructure, and a receptive climate for tourism investment; and

   l. A comprehensive tourism policy is essential if tourism in the state is to grow in an orderly manner.

2. The legislative assembly declares it is the policy of this state to:

   a. Encourage the orderly growth and development of tourism to, and within, the state;

b. Promote the availability of public tourism training to increase the skills and productivity of the tourism labor force and to broaden access to employment opportunities and the visitor industry;

c. Encourage a healthy competitiveness in the visitor industry;

d. Promote the availability of reliable public highways and transport services between the state's principal tourism destinations and the main tourism generating markets;

e. Expand off-season tourism to the state and thereby increase the productivity of the accommodation sector and reduce seasonal layoffs within the visitor and visitor-related industries;

f. Promote a sense of history in the state's young people by encouraging family visits to state historic sites, and promoting the preservation and restoration of historic sites, trails, buildings, and districts;

g. Promote the mental, emotional, and physical well-being of the American people by encouraging outdoor recreational activities within the state;

h. Encourage the talents and strengthen the economic independence of the state's residents by encouraging the preservation of traditional craft skills, the production of handicrafts and native and folk art by private artisans and crafts people, and the holding of craft demonstrations;

i. Encourage an optimum of satisfaction and high quality service to visitors;

j. Promote a tourist environment that respects our visitors' rights as consumers;

k. Afford visitors and residents the best possible conditions of public sanitation;

l. Facilitate tourism to, and within, the state by developing an essential tourism infrastructure, providing investment incentives to tourism businesses, and encouraging city and county officials to plan for tourism needs and capitalize on local tourism resources;

m. Promote a better understanding among the state's residents of the social and economic importance of tourism through appropriate formal and informal learning experiences about tourism, and foster among all citizens the capacity for courtesy to visitors;

n. Encourage the holding of conventions, trade shows, and expositions throughout the state;

o. Promote tourism in a manner that fosters visitors' understanding and respect for native and religious beliefs, customs, and ethnic traditions of the state's residents;

p. Monitor tourist impact on the basic human rights of the state's residents and ensure equal access by visitors and residents to public recreational resources;

q. Take measures to protect wildlife and natural resources in the preservation of geological, archaeological, and cultural treasures in tourist areas;

r. Encourage, assist, and coordinate when possible the tourism activities of local and area promotional organizations; and

s. Ensure that the tourism interest of the state is considered fully by state agencies and the legislative assembly in their deliberations; and harmonize to the maximum extent possible, all state activities in support of tourism with the needs of the general public, the political subdivisions of the state, and the visitor industry.

SECTION 18. AMENDMENT. Section 55-08-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-01.1. State parks and tourism policy. The parks and ~~tourism~~ recreation department shall plan and coordinate government programs encouraging the full development and preservation of existing and future parks, outdoor recreation areas, and nature preserves~~, and the promotion of tourism~~.

SECTION 19. AMENDMENT. Section 55-08-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-01.2. Parks and ~~tourism~~ recreation department - ~~Directors~~ Director. There is created a parks and ~~tourism~~ recreation department to serve as the focal point in the state for activities related to parks ~~and tourism~~. The department shall plan and coordinate programs for all governmental levels to fulfill the state parks ~~and tourism~~ policy. ~~The department consists of two divisions: a parks and outdoor recreation sites division and a tourism division.~~ The governor shall appoint a director of ~~each division~~ the parks and recreation department who shall serve at the will of the governor.

SECTION 20. AMENDMENT. Section 55-08-01.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-01.3. Director of parks and ~~outdoor~~ recreation ~~sites division~~ department - Powers - Penalty. The director of the parks and ~~outdoor~~ recreation ~~sites division~~ department shall:

1. Manage all state parks, state campgrounds, state recreational areas, or reserves, and any other property under the control of the parks and ~~tourism~~ recreation department, including site selection and planning, establishment of fees and charges, establishment of hours and seasons of operation, and regulation of the conduct of guests and visitors.

2. Appoint personnel necessary to carry out the duties and functions of the ~~division~~ department, and fix their compensation within the limits of legislative appropriations.

3. Accept on behalf of the state, gifts or grants of property for the department.

4. Acquire by purchase, gift, or condemnation any real property or interest in real property in this state or an adjoining state if necessary for park purposes. However, condemnation proceedings may be instituted only upon approval by the emergency commission.

5. Lease, sell, or exchange real property under the department's control if necessary for the improved management of state parks, state campgrounds, and state recreational areas or reserves.

6. Administer all real property and interests in real property and personal property held for recreational purposes as an agent for any state or federal agency or a political subdivision of the state.

7. Adopt rules relating to the protection, care, and use of state parks, state campgrounds, state recreational areas, or reserves, and any other real or personal property administered by the director.

8. Sell, mortgage, transfer, or dispose of property under the control of the department as authorized by law.

9. Seek the advice of the superintendent of the state historical board on all matters relating to history, prehistory, and paleontology of the state parks. If additional assistance is needed or required, the superintendent shall coordinate the assistance.

10. Advise in advance and consult with the superintendent of the state historical board before undertaking any earthmoving operations or major constructions so that the director may be advised whether the earthmoving operations or constructions might endanger historical archaeological artifacts or the paleontological value of the area. The superintendent of the state historical board and the director shall jointly agree on the disposition of historical artifacts and archaeological material at state monuments and state parks.

11. In the director's discretion, designate any state park or state campground or an area within any state park or state campground as an area within which the use of alcoholic beverages is prohibited. Any person violating that designation is guilty of an infraction.

SECTION 21. AMENDMENT. Section 55-08-02.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-02.1. Outdoor recreation interagency council - Composition - Functions. A state outdoor recreation interagency council is created and must be composed of the state engineer of the water commission, director of the game and fish department, superintendent of the state historical board, director of the department of transportation, executive secretary of the state soil conservation committee, the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department, chairman of the state water commission, state health officer, director of the department of economic development and finance, state forester, and the commissioner of university and school lands. The governor or the governor's designee is council chairman.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations that are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member has one vote in those matters.

2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with the meetings.

3. Shall cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds that the state may become eligible to receive.

4. Shall encourage cooperation among public, voluntary, and commercial agencies and organizations.

5. Subject to the approval of the governor, may adopt rules for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

SECTION 22. AMENDMENT. Subsection 1 of section 55-08-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Apply for and receive federal grants-in-aid for recreation purposes. The director of the parks and ~~outdoor~~ recreation ~~sites division~~ department may approve their allocation to political subdivisions of the state only after the director has determined that sufficient funds, including those funds necessary for adequate maintenance, are and will be available from the political subdivisions for meeting the state's share of project costs. If for any reason it is necessary for any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision which it has agreed to perform in the construction or maintenance of such projects, the state has a claim against the subdivision for the money expended. All funds allocated to the state for recreation purposes must be distributed to the departments, agencies, or political subdivisions entitled to the funds.

SECTION 23. AMENDMENT. Section 55-08-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07. State park ~~and tourism~~ fund - Appropriation. All revenues collected as permit fees, admissions, use charges, rentals, compensation for concession agreements, or otherwise, with the exception of revenue from bequests, trusts, or gifts, and with the exceptions noted in subsections 1 and 2 of section 55-08-06, must be placed in the state park ~~and tourism~~ fund, together with all proceeds of bonds issued pursuant to section 55-08-08. This fund must be maintained by the state treasurer as a special trust fund and is irrevocably appropriated and must be used and disbursed solely for the following purposes:

1. To pay the current cost of furnishing each special service provided in accordance with this chapter. For this purpose the charges, fees, and rentals for each service must be credited to a special operating account, from which must be paid only the current, reasonable, and necessary cost of operating that service, determined in accordance with accepted accounting practice, including the purchase price of merchandise and utilities sold and the compensation of employees necessarily attributable

to the furnishing of that service. The director may incur no operating cost for any building, structure, or facility leased, and the leases must provide for the payment of the costs by the lessee and for the payment of a net rental in addition to the costs. No lease rentals and no motor vehicle permit fees may be credited to operating accounts.

2. To provide for the payment and security of the principal and interest when due on any state park ~~and tourism~~ revenue bonds issued under section 55-08-08. For this purpose the treasurer shall credit to a special service account within the state park ~~and tourism~~ fund, as received, all bond proceeds, all motor vehicle permit fees and all rental payments by lessees, and all net income remaining in the operating account for each special service at the end of each month, in excess of the costs of operation thereof which are then payable or are to become due and payable within one month, and shall transfer from this fund and account to the revenue bond fund described in section 55-08-09, whenever necessary, so much of the revenues then on hand as may be required to produce a balance in the revenue bond fund equal to the interest due and to become due within eighteen months plus the principal due and to become due within twenty-four months thereafter on all outstanding series of the bonds.

3. To finance the acquisition, construction, reconstruction, improvement, betterment, or extension of the department's properties, for projects within state parks, state campgrounds, state recreation areas, and reserves including the acquisition of land and water, the erection of buildings and structures, and the improvement of properties held in trust for or leased by the state, as authorized by the legislative assembly. For this purpose the director shall authorize the disbursement of bond proceeds and revenues received in the fund. However, a disbursement may not be made in excess of the amounts of revenue bonds issued and other funds granted or appropriated and received for this purpose, and no disbursements may be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

4. For any other purpose for which funds have been appropriated by the legislative assembly to the parks and ~~tourism~~ recreation department. A disbursement may not be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

SECTION 24. AMENDMENT. Section 55-08-07.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.1. State parks and ~~tourism department~~ recreation concession revolving fund. The director shall maintain a state parks and ~~tourism~~ recreation concession revolving fund to be used for the following:

1. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.

2. Repair, replacement, construction, and maintenance of concession buildings, facilities, and properties contained therein.

The sum of fifty thousand dollars is hereby established in the state parks and ~~tourism~~ recreation concession revolving fund for the purpose provided in this section as a limit on the fund balance after accrued liabilities on June thirtieth of each year. Any surplus in this fund in excess of fifty thousand dollars on June thirtieth of each year must be transferred to the state park ~~and tourism~~ operating fund.

SECTION 25. AMENDMENT. Section 55-08-07.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.2. State parks ~~and tourism~~ gift fund - Fund use. There is established in the state treasury a special fund designated as the state parks ~~and tourism~~ gift fund. All donations to the parks and ~~tourism~~ recreation department in the form of gifts, trusts, and bequests of money, that would cause the department to exceed its appropriated spending authority and any interest accruing thereon, must be placed in the state parks ~~and tourism~~ gift fund and is hereby appropriated to the department. The fund may be used and disbursed by the parks and ~~tourism~~ recreation department, with the approval of the state emergency commission, in accordance with the terms of the donation as determined by the director.

SECTION 26. AMENDMENT. Section 55-08-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-08. State park ~~and tourism~~ revenue bonds. For the purpose of paying all or part of the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of properties for state parks, state campgrounds, state recreation areas, and reserves, as described in subsection 2 of section 55-08-07, which may be authorized by the legislative assembly, the money may be borrowed on the credit of the revenues to be received in the state park ~~and tourism~~ fund. The borrowing must be authorized by a board consisting of the governor, the state treasurer, and the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department, by resolution or resolutions duly adopted by the vote of a majority of all members of the board. In anticipation of the collections of the revenues, negotiable bonds may be issued in an amount as, in the opinion of the board, may be necessary for that purpose, within the limits of the authority granted by the legislative assembly in each instance, and the board may provide for the payment of the bonds and the rights of the holders of the bonds as provided in this chapter. The bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their date, may be in such denomination or denominations, may be in such form, either coupon or fully registered or registered as to ownership or principal, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate or rates of interest, as may be provided by resolution or resolutions to be adopted by the board, subject to this section. The bonds may be sold in such manner and at such price or prices, not less than ninety-eight percent of par plus accrued interest to date of delivery, as may be considered by the board to be advisable. The bonds must have all of the qualities and incidents of negotiable paper, and the bonds and the income from the bonds are exempt from any taxes, except inheritance, estate, and transfer taxes. The board may in its discretion authorize one series of bonds hereunder for more than one project, at more than one state park, state campground, state recreation area, or reserve. It may also issue series of bonds hereunder for the refunding of outstanding bonds issued hereunder when such action is desirable in its judgment and

is consistent with the terms of the resolution or resolutions authorizing the outstanding bonds.

SECTION 27. AMENDMENT. Section 55-08-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-09. Revenue bond fund. After the issuance of any bonds under section 55-08-08, the state treasurer shall transfer revenues at the times and in the amounts directed in section 55-08-07 to a special trust fund to be known as the state park ~~and tourism~~ revenue bond fund, which must be maintained in the state treasury until all bonds issued under section 55-08-08 and all interest on the bonds is fully paid and discharged. This fund must be disbursed by the state treasurer solely for the purpose of paying principal and interest when due on the bonds, and the treasurer shall also maintain in the fund, by the transfer of revenues from the state park ~~and tourism~~ fund whenever necessary and available, a reserve at all times equal to the total amount of principal and interest to become due on all the bonds within the then next period of twelve months. As principal and interest become due from time to time, the director of the office of management and budget, not less than fifteen days before the payment dates, shall issue warrants upon the state treasurer against the revenue bond fund for the amount of the payment coming due, and the state treasurer shall make payments from the fund of the amounts due.

SECTION 28. AMENDMENT. Section 55-08-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-10. Covenants of board. The board shall pledge irrevocably the revenues appropriated by section 55-08-07 to the state park ~~and tourism~~ fund for the payment of principal and interest due on all bonds issued pursuant to section 55-08-08 and for the accumulation and maintenance of the reserve in the state park ~~and tourism~~ revenue bond fund as provided in section 55-08-09. To secure the prompt payment of the principal and interest and the proper application of the revenues pledged thereto, the board may by appropriate provisions in the resolution or resolutions authorizing the bonds covenant as to the use and disposition of the proceeds of the sale of the bonds; the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds; the issuance of any other obligation payable from the revenues; and any other matters other than and in addition to those expressly mentioned in this section, as to which covenants may be considered necessary or advisable to effect the purposes of this chapter. All such agreements and covenants entered into by the board are enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder.

SECTION 29. AMENDMENT. Section 55-08-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-11. Limitation on use of bond proceeds. No buildings or additions may be erected, and no bonds may be issued or the proceeds used for the payment of the cost of any projects under section 55-08-08, except for specified projects designated and authorized by legislative act, or the board if permitted by the legislative assembly. No such project may be erected at a cost exceeding the amount fixed by the legislative assembly or by the board if provided by the legislative assembly as the maximum to be expended for the project. The proceeds of all bonds credited to the state park ~~and tourism~~ fund must be used solely for the purpose or purposes for which the bonds are authorized. The board may make and execute all

instruments which may be deemed necessary or advisable to provide for the completion of any project or for the sale of the bonds or for interim financing deemed necessary or advisable pending the sale of the bonds, and pledging the proceeds of the bonds. The director of the office of management and budget shall issue warrants upon the state treasury against the fund for such amounts as is due upon audited itemized estimates and claims that bear the approval of the officials designated by the board for that purpose. The state park ~~and tourism~~ fund and revenue bond fund may be deposited by the state treasurer with the Bank of North Dakota or in a bank that is a duly designated depository for state funds, or may be invested under direction of the board in securities that are direct obligations of the United States of America, except to the extent that the investment is prohibited or restricted by any covenant made with or for the benefit of bondholders.

SECTION 30. AMENDMENT. Section 55-08-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-12. Contracts with federal agencies. The director of the parks and ~~outdoor~~ recreation ~~sites division~~ department may enter into any agreements or contracts with the United States of America or any agency or instrumentality thereof, when the director considers such action advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds in paying the cost of a project.

SECTION 31. AMENDMENT. Section 55-08-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-13. Construction of chapter - Statement to be included in bonds. This chapter does not authorize or permit any state board or agency or any state officer to create any indebtedness of the state, or to incur any obligation of any kind or nature except an obligation payable solely from the special trust funds created under this chapter and the revenues appropriated to the funds. The state or any funds or moneys of the state other than the special trust funds may not be deemed obligated for the payment of bonds issued under section 55-08-08. All such bonds must include or must have endorsed on the bonds a statement that the bonds do not constitute an indebtedness of the state and are payable solely from the revenues appropriated to the state park ~~and tourism~~ fund and revenue bond fund.

SECTION 32. AMENDMENT. Section 55-08-14.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. One-fourth of all moneys made available to the department for the grants must be used for a leadership grant program. This program shall provide enhanced recreational opportunities to state residents, particularly in communities with a population of thirteen thousand or less, regardless of age or state of health. Moneys must be provided on a three-to-one basis for the first year of a grant, one-to-one for the second year of a grant, and one-to-three for the third year of the grant, after which the program must be fully funded locally.

2. Three-fourths of all moneys made available to the department for the grants must be used for a facilities grant program. This program must

provide funds, on a fifty percent matching basis, for political subdivisions to improve, renovate, or construct any type of facility primarily used for community, park, and recreation purposes.

SECTION 33. AMENDMENT. Section 55-10-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-10-04. State historic sites - Registry - State-owned lands administered by the parks and ~~tourism~~ recreation department or state historical society. The land and water areas in this section are designated as state historic sites, and this section is a registry of state historic sites situated on property owned by the state and administered by the parks and ~~tourism~~ recreation department, or state historical society:

1. Fort Rice, located near the town of Fort Rice in Morton County, and consists of seven acres [2.83 hectares].
2. Whitestone Hill battlefield, site of battle of Whitestone Hill, located in Whitestone Hill State Park in Dickey County, and consists of sixty-six acres [26.71 hectares].
3. Fort Abercrombie, located in Fort Abercrombie State Park in Richland County, and consists of twenty-one and ninety-five one-hundredths acres [8.88 hectares].
4. Fort Buford, located in Fort Buford State Park in Williams County, and consists of thirty-six and fifty-three ~~one-hundredth~~ one-hundredths acres [14.78 hectares].
5. Fort McKeen, located in Fort Abraham Lincoln State Park in Morton County.
6. Fort Abraham Lincoln, located in Fort Abraham Lincoln State Park in Morton County.
7. Slant Indian village, located in Fort Abraham Lincoln State Park in Morton County.

SECTION 34. AMENDMENT. Subsection 3 of section 55-11-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Department" means the parks and ~~tourism~~ recreation department.

SECTION 35. AMENDMENT. Section 57-02-08.7 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.7. License fee in lieu of property taxes on leases for tourism or concession purposes. Payment of the license fee as provided in this section by the lessee of any leasehold interest in state-owned property leased from the superintendent of the state historical board or the director of the parks and ~~outdoor~~ recreation ~~sites division of the parks and tourism~~ department is a payment in lieu of all ad valorem taxes on the leasehold interest or any associated building or other improvement if the lessee uses the property, building, or other improvement primarily for tourism or concession purposes. The superintendent or the director shall establish the license fee at an annual amount not less than one dollar and not more than one percent of the gross receipts from the tourism or concession enterprise. The lessee shall pay the license fee to the treasurer of the county in

which the tourism or concession enterprise is located and all fees received under this section must be deposited in the county general fund. The lease must indicate that the superintendent or the director approves use of the property primarily for tourism or concession purposes and intends the license fee paid by the lessee to be in lieu of ad valorem taxes.

SECTION 36. AMENDMENT. Subsection 6 of section 57-39.2-28 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of the tourism ~~division of the parks and tourism~~ department.

SECTION 37. AMENDMENT. Section 61-29-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-29-04. Administration. This chapter must be administered by a Little Missouri River commission composed of the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department, the state health officer of the state department of health and consolidated laboratories, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley county representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

SECTION 38. AMENDMENT. Subsection 1 of section 61-33-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and ~~outdoor~~ recreation ~~sites division~~ department, the director of the game and fish department, and the state health officer, or their representative.

SECTION 39. REPEAL. Sections 55-08-01.4, 55-08-01.5, and 55-08-01.6 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 81

SENATE BILL NO. 2154
(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA MORTGAGE LOANS PURCHASE

AN ACT to create and enact a new subsection to section 6-09-15 of the North Dakota Century Code, relating to the purchase of mortgage loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09-15 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Purchase mortgage loans on residential real property originated by financial institutions.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 82

HOUSE BILL NO. 1085
(Agriculture Committee)
(At the request of the Commissioner of Agriculture)

AGRICULTURAL MEDIATION SERVICE

AN ACT to amend and reenact section 6-09.10-03 of the North Dakota Century Code, relating to continuation of the agricultural mediation service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the ~~chairman~~ chair, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1993~~ 1995. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 83

SENATE BILL NO. 2153
(Agriculture Committee)
(At the request of the Bank of North Dakota)

FAMILY FARMER LOAN PARTICIPATION RATES

AN ACT to amend and reenact subsection 1 of section 6-09.11-03 of the North Dakota Century Code, relating to the interest rate on participation interests purchased by the Bank of North Dakota for loans to family farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.11-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.11-04. Interest charged on a participation interest purchased by the Bank under this section ~~may not exceed eight percent per annum for the first five years of the loan. For the remaining time period of the loan, interest charged by the Bank may not exceed one percent less than the Bank's base rate, as it may be established from time to time. For loans under this section, the Bank may not charge an interest rate exceeding eleven percent at any time during the course of the loan~~ may not be greater than one percent less than the Bank's base rate as in effect from time to time, and may float. However, the interest rate may not exceed eleven percent during the course of the loan. The Bank may charge for necessary and reasonable fees as determined by the industrial commission.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 84

HOUSE BILL NO. 1113
(Agriculture Committee)
(At the request of the Bank of North Dakota)

AGRICULTURE PACE PROGRAM

AN ACT to create and enact a new subsection to section 6-09.13-01 and a new subsection to section 6-09.13-02 of the North Dakota Century Code, relating to the definition of on-farm business and adoption of rules regarding buydown of interest rates on loans to on-farm businesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09.13-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"On-farm business" means any farm business located on a family farm. If a farmer can demonstrate compelling economic reasons for locating a business in a community adjacent to the family farm and financial assistance under this chapter will not give the farmer an unfair economic advantage over a similar non-farm business, the business may qualify as on-farm.

SECTION 2. A new subsection to section 6-09.13-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The Bank shall adopt rules to implement this chapter.

Approved April 7, 1993
Filed April 8, 1993

CONTRACTS AND OBLIGATIONS

CHAPTER 85

HOUSE BILL NO. 1217
(Representatives Wald, Tollefson)
(Senators Freborg, Keller)

AUTO ACCIDENT DAMAGE LIABILITY

AN ACT to create and enact a new section to chapter 9-10 of the North Dakota Century Code or, in the alternative, a new section to chapter 32-03.2 of the North Dakota Century Code, relating to liability for damages in automobile accidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If section 9-10-07, as it existed on July 7, 1987, goes into effect on July 1, 1993, a new section to chapter 9-10 of the North Dakota Century Code is created and enacted as follows:

Automobile accident damage liability. Notwithstanding section 9-10-07, in an action by any person to recover damages for injury to property, the damages may not be diminished in proportion to the amount of contributing negligence attributable to the person recovering, or otherwise, if:

1. The party seeking damages is seeking property damages resulting from a two-party automobile accident;

2. The party seeking damages is seeking to recover property damages of not more than five thousand dollars; and

3. The percentage of negligence of the person against whom recovery is sought is over fifty percent.

SECTION 2. If section 9-10-07, as it existed on July 7, 1987, does not go into effect on July 1, 1993, and section 32-03.2-02 is in effect after June 30, 1993, a new section to chapter 32-03.2 of the North Dakota Century Code is created and enacted as follows:

Automobile accident damage liability. Notwithstanding section 32-03.2-02, in an action by any person to recover damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The party seeking damages is seeking property damages resulting from a two-party automobile accident;

2. The party seeking damages is seeking to recover property damages of not more than five thousand dollars; and

3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

Approved April 2, 1993
Filed April 2, 1993

CORPORATIONS

CHAPTER 86

HOUSE BILL NO. 1493
(Representatives Coats, Stenson)
(Senators Evanson, Tallackson)

NDEA SECURITIES EXEMPTION

AN ACT to create and enact a new subsection to section 10-04-05 and a new subsection to section 10-04-06 of the North Dakota Century Code, relating to securities issued by the North Dakota education association dues credit trust and to transactions in securities issued by the North Dakota education association dues credit trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-05 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

SECTION 2. A new subsection to section 10-04-06 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 87

HOUSE BILL NO. 1374
(Representatives Hanson, Nicholas, A. Olson)
(Senators Marks, Redlin, Traynor)

NONPROFIT CORPORATE FARMLAND OWNERSHIP

AN ACT to amend and reenact section 10-06-04.3 of the North Dakota Century Code or in the alternative to amend and reenact section 10-06.1-10 of the North Dakota Century Code as created in section 2 of Senate Bill No. 2223, as approved by the fifty-third legislative assembly, relating to acquisition of farmland or ranchland by nonprofit organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If Senate Bill No. 2223 does not become effective, section 10-06-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-06-04.3. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06-04.1, the nonprofit organization must, before January 1, 1985, have been either incorporated in this state or issued a certificate of authority to do business in this state or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.

2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

   a. The land must be maintained and managed ~~solely~~ for the purpose of conserving natural area and habitat for biota.

   b. Any agricultural use of the land is ~~incidental to and~~ in accordance with the management of the land for conservation and ~~the~~ agricultural use, and is by an individual or by a person allowed to engage in farming or ranching under section 10-06-07.

   c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

   d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, ~~the state forester,~~ the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall ~~review~~ hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within ~~thirty~~ forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.

5. On failure to qualify to continue ownership under subsection 2, the land is disposed of within five years of that failure to qualify.

SECTION 2. AMENDMENT. Section 10-06.1-10 of the North Dakota Century Code as created by Senate Bill No. 2223, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.

2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

   a. The land must be maintained and managed ~~solely~~ for the purpose of conserving natural area and habitat for biota.

   b. Any agricultural use of the land is ~~incidental to and~~ in accordance with the management of the land for conservation and ~~the~~ agricultural use, and is by a sole proprietorship or partnership, or a corporation

or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall ~~review~~ hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within ~~thirty~~ forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.

5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 88

HOUSE BILL NO. 1508
(Representative Austin)

COOPERATIVE FILING CHANGES

AN ACT to create and enact sections 10-15-12.1 and 10-15-52.6 to the North Dakota Century Code, relating to change of a cooperative's registered office or registered agent; to amend and reenact sections 10-15-13, 10-15-36, 10-15-38, 10-15-46, 10-15-51, 10-15-52.1, and 10-15-52.3 of the North Dakota Century Code, relating to cooperative requirements; and to repeal section 10-15-52.2 of the North Dakota Century Code, relating to amendment to articles of association of foreign cooperatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 10-15-12.1 of the North Dakota Century Code is created and enacted as follows:

10-15-12.1. Change of registered office or registered agent - Change of name of registered agent.

1. A cooperative may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, with the fees provided in section 10-15-54, a statement containing:

   a. The name of the cooperative.

   b. If the address of its registered office is to be changed, the new address of its registered office.

   c. If its registered agent is to be changed, the name of its new registered agent.

   d. If the name of its registered agent is to be changed, the name of its registered agent as changed.

   e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

   f. A statement that the change of registered office or registered agent was authorized by a resolution approved by the board.

2. A registered agent of a cooperative may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the cooperative at its principal executive office or to a legal representative of the cooperative. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each cooperative represented by that agent by filing the statement required by subsection 1 with the secretary of state, except that the statement need only be signed by the registered agent, need not be responsive to subdivison c or f of subsection 1, and must state that a copy of the statement has been mailed to each of those affected cooperatives or their legal representative.

SECTION 2. AMENDMENT. Section 10-15-13 of the North Dakota Century Code is amended and reenacted as follows:

10-15-13. Service of process. The registered agent appointed by a cooperative shall be an agent of the cooperative and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served upon the cooperative or its directors may be served.

Whenever a cooperative ~~shall fail to~~ does not appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such cooperative upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand ~~shall~~ must be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, ~~duplicate~~ an original and two copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the cooperative at ~~its registered office~~ the address of the principal place of business or to the nonresident director at his ~~filed~~ last reported address, as the case may be. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a cooperative or its directors in any other manner permitted by law.

SECTION 3. AMENDMENT. Section 10-15-36 of the North Dakota Century Code is amended and reenacted as follows:

[1] **10-15-36. Annual reports - Filing thereof - Fees - Penalties.**

1. A cooperative and a foreign cooperative shall file an annual report signed by a principal officer or the general manager setting forth:

   a. Its name and complete address of its principal place of business.

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[1] NOTE: Section 10-15-36 was also amended by section 5 of House Bill No. 1211, chapter 75.

b. The names and addresses of its directors and principal officers.

c. A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.

d. A statement as to the general type of business engaged in during the prior year.

2. Such annual report shall be made on forms ~~furnished~~ prescribed by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. ~~Each December the secretary of state shall forward report blanks to each cooperative in good standing required to make an annual report.~~

3. The annual report shall be delivered to the secretary of state between January first and March thirty-first of each year following incorporation. A fee of ten dollars shall be paid to the secretary of state for filing the report. If the report does not conform to requirements, it shall be returned to the cooperative for necessary corrections. The penalties for failure to file such report shall not apply if it is corrected and returned within thirty days after ~~receipt thereof~~ the annual report was returned by the secretary of state. The secretary of state may extend the filing date for the annual report of any cooperative ~~whenever in his discretion he considers such an extension of time advisable and proper~~ if a written application for an extension is received on or before March thirty-first.

4. Any report filed after March thirty-first may be filed only upon payment to the secretary of state of the following fees:

a. If filed prior to May first, fifteen dollars.

b. If filed thereafter but not later than the following ~~December first~~ March thirty-first, twenty-five dollars.

5. If the report is not filed before ~~the following December second,~~ May first, the secretary of state shall notify any cooperative or foreign cooperative failing to file its annual report that the cooperative is not in good standing and ~~shall be considered to be inactive~~ that it may be dissolved or its authority may be revoked. If the cooperative or foreign cooperative files its annual report after the notice with a fee of twenty-five dollars, the secretary of state will restore the certificate of incorporation or authority to good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting such cooperative except those incident to its dissolution or withdrawal. ~~The secretary of state,~~ If the annual report of a cooperative is not filed on or before ~~the first day of July~~ March thirty-first of ~~each~~ the year following the year a cooperative is found to be ~~inactive, shall certify to the attorney general the names of all cooperatives which have failed to file their reports in accordance with this section, together with the facts pertinent thereto, and shall also mail a copy of such certificate to the cooperative involved. Upon the receipt of such certification, the attorney general may in his discretion file an action in the name of the state against such cooperative for its dissolution~~ not in good standing, the cooperative ceases to exist and is

considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the cooperative on the records of the secretary of state and shall give notice of the action to the dissolved cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business.

If the annual report of a foreign cooperative is not filed on or before March thirty-first of the year following the year it is found to be not in good standing, the foreign cooperative forfeits its authority to transact business in North Dakota. The secretary of state shall note the revocation on the records of the secretary of state and shall give notice of the action to the revoked foreign cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

6. ~~The~~ A cooperative which was dissolved for failure to file an annual report, or a foreign cooperative whose authority was forfeited for failure to file an annual report, may be ~~restored to good standing~~ reinstated by ~~delivering to~~ filing the ~~secretary of state a current~~ past due annual report and ~~by~~ paying ~~twenty-five~~ fifty dollars ~~for each calendar year or part thereof during which it was not in good standing, not exceeding a total of one hundred fifty dollars~~. The fees must be paid and the report filed within one year following the date of the involuntary dissolution or revocation. Reinstatement under this section does not affect the rights or liability of any person for the time from the dissolution or revocation to the reinstatement.

7. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 4. AMENDMENT. Section 10-15-38 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-15-38. Filing amendments - Limitation of action.

1. Amendments to articles must be signed and acknowledged by an officer of the cooperative~~, be sealed with the cooperative's seal,~~ and set forth:

   a. The name of the cooperative.

   b. The amendments and date of adoption.

   c. The number of members.

   d. The number of members voting for and against the amendment.

2. One copy of the amendment must be retained in the records of the association, and one copy must be filed in the office of the secretary of state.

3. No amendment may affect any existing claim for relief or proceedings to which the cooperative is a party or existing rights of persons other than members or stockholders.

4. No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within two years after the date of filing.

5. A cooperative that amends its name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 5. AMENDMENT. Section 10-15-46 of the North Dakota Century Code is amended and reenacted as follows:

10-15-46. Involuntary dissolution.

1. A cooperative may be dissolved involuntarily by a decree of the district court where the principal office or registered agent is located in an action commenced by the attorney general when any of the following is established:

   a. ~~The cooperative failed to file its annual report as required by this chapter.~~

   ~~b.~~ The cooperative's certificate of association was procured through fraud.

   ~~c.~~ b. The cooperative has continued to exceed or abuse the authority conferred upon it by this chapter.

   ~~d.~~ c. The cooperative failed to comply with a court order for the production of books, records, or other documents of the cooperative as provided in section 10-15-35.

2. If the cooperative cures its defaults ~~other than those~~ under ~~subdivisions b and c~~ subdivision c of subsection 1 prior to the entry of the court's final decree and pays all penalties and court costs that have accrued, the claim for relief with respect to the defaults so cured will abate.

SECTION 6. AMENDMENT. Section 10-15-51 of the North Dakota Century Code is amended and reenacted as follows:

10-15-51. Admission of foreign cooperatives. A foreign cooperative is authorized to do business in this state ~~upon issuance of~~ when the secretary of state issues a certificate of authority ~~to that effect by the secretary of state~~. In order to procure such certificate, ~~it~~ the foreign cooperative shall make application therefor to the secretary of state, and file ~~a certified copy of the articles of association and all amendments on file in~~ with a certificate of good standing or certificate of existence duly authenticated by the incorporating officer of the state or country of incorporation. The application shall set forth:

1. The name of the cooperative and the state or country under the laws of which it is incorporated.

2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the cooperative ~~in the state or country under the laws of which it is incorporated~~.

4. The address of the proposed registered office of the cooperative in this state, and the name of its proposed registered agent in this state at such address.

5. The purpose or purposes of the cooperative which it proposes to pursue in the transaction of business in this state.

6. The names and respective addresses of the directors and officers of the cooperative.

7. ~~A statement of its aggregate number of members, and of the number of members by classes, if any.~~

~~8. A statement of the aggregate amount of authorized and issued capital stock itemized by classes, par value of stock, stock without par value, and series, if any, within a class.~~

~~9.~~ Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such cooperative is entitled to a certificate of authority to transact business in this state ~~and to determine and assess fees payable~~.

Such application shall be made on forms prescribed ~~and furnished~~ by the secretary of state and shall be executed ~~in duplicate~~ by ~~the~~ an officer of the cooperative ~~by its president or a vice president and by its secretary or an assistant secretary~~.

SECTION 7. AMENDMENT. Section 10-15-52.1 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.1. Merger of foreign cooperative authorized to transact business in this state. Whenever a foreign cooperative authorized to transact business in this state ~~shall be~~ is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is associated, and such cooperative ~~shall be~~ is not the surviving cooperative~~, it shall~~, within thirty days after such merger becomes effective, the surviving cooperative shall file with the secretary of state a ~~copy~~ certificate of ~~the articles~~ fact of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected. ~~It shall not be necessary for such cooperative to procure either a new or amended certificate of authority to transact business in this state unless the name of such cooperative be changed thereby or unless the cooperative desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.~~

SECTION 8. AMENDMENT. Section 10-15-52.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-15-52.3. Amended certificate of authority. A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 9. Section 10-15-52.6 of the North Dakota Century Code is created and enacted as follows:

10-15-52.6. Change of registered office or registered agent of foreign cooperative.

1. A foreign cooperative authorized to transact business in this state may change its registered office or its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

   a. The name of the cooperative.

   b. If the address of its registered office is to be changed, the new address of its registered office.

   c. If its registered agent is to be changed, the name of its new registered agent.

   d. That the addresses of its registered office and the business office of its registered agent, as changed, will be identical.

   e. That the change was authorized by resolution duly adopted by its board of directors.

   The statement must be executed by the cooperative by its president or a vice president and delivered to the secretary of state. If a registered agent changes its name or its business address, the agent may change its name or address, as the case may be, for any cooperatives of which it is the registered agent by filing a statement as required above with one copy for each cooperative listed on the certificate. The statement need only be signed by the registered agent, need not be responsive to subdivision c or e of this section, and must recite that a copy of the statement has been mailed to each listed cooperative or to the legal representative of each. A copy of the statement must be mailed by the registered agent to each listed cooperative or the legal representative of each cooperative.

2. A registered agent of a foreign cooperative may resign upon filing a written notice with the secretary of state, including a statement that a signed copy of the notice has been given to the foreign cooperative at its principal executive office or to a legal representative of the cooperative. The appointment of the agent terminates upon the expiration

of thirty days after filing the notice with the secretary of state. The registered agent must also give a signed copy of the notice to the foreign cooperative at its principal executive office or a legal representative of the cooperative.

SECTION 10. REPEAL. Section 10-15-52.2 of the North Dakota Century Code is repealed.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 89

HOUSE BILL NO. 1077
(Judiciary Committee)
(At the request of the Supreme Court)

CONTEMPT OF COURT

AN ACT to create and enact four new sections to chapter 27-10 of the North Dakota Century Code, relating to contempt of court; to amend and reenact sections 10-15-35, 14-05-25.1, 14-06-03.1, 14-07.1-06, 14-08.1-05, 14-12.1-09, 14-17-09, 14-17-16, 27-09.1-07, 27-10-07, 27-10-08, 27-10-09, 27-10-10, 27-10-11, 27-10-13, 27-10-18, 27-10-19, 27-10-20, 27-10-23, 27-19-07, 27-20-55, 28-21-12.1, 29-10.1-39, 42-02-10, 42-02-11, 51-15-06.1, and subsection 7 of section 54-35-02 of the North Dakota Century Code, relating to contempt of court; and to repeal sections 12.1-10-01, 27-09.1-16, 27-10-03, 27-10-04, 27-10-05, 27-10-06, 27-10-12, 27-10-14, 27-10-15, 27-10-16, 27-10-17, 27-10-21, 27-10-22, 27-10-24, 27-10-25, 27-10-26, and 27-10-27 of the North Dakota Century Code, relating to contempt of court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-35 of the North Dakota Century Code is amended and reenacted as follows:

10-15-35. Books and records - Penalty for refusal to produce.

1. A cooperative shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board, and executive committee. The cooperative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any member or stockholder, or ~~his~~ the agent or attorney of either, upon written notice ~~stating the purposes thereof,~~ delivered or sent to the cooperative at least one week in advance, may examine ~~for a proper purpose~~ any books or records ~~pertinent to the~~ for a purpose that is proper and specified in ~~such~~ the notice.

2. In any proceedings, or upon petition ~~for such purpose~~, any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the cooperative's books or records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to be brought within this state. ~~Such~~ The documents ~~shall~~ must be kept at ~~such~~ the place and for ~~such~~ the time and purposes ~~as~~ the order designates. Any cooperative failing to comply with the order is subject to dissolution, and its directors and officers are ~~liable for~~ guilty of contempt of court~~, and may be punished as provided in section 12.1-10-01~~.

SECTION 2. AMENDMENT. Section 14-05-25.1 of the North Dakota Century Code is amended and reenacted as follows:

14-05-25.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with the provisions of a divorce decree relating to distribution of the property of the parties ~~may be punished as civil~~ constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

SECTION 3. AMENDMENT. Section 14-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

14-06-03.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with provisions of a decree of separation relating to distribution of the property of the parties ~~may be punished as civil~~ constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

SECTION 4. AMENDMENT. Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

[1] **14-07.1-06. Penalty for violation of a protection order.** Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes ~~criminal~~ contempt of court ~~subject to penalties therefor~~.

SECTION 5. AMENDMENT. Section 14-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:

   a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, including the ability to be entered in the judgment book pursuant to rule 58 of the North Dakota Rules of Civil Procedure and otherwise enforced as a judgment;

   b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and

   c. Not subject to retroactive modification.

2. Failure to comply with the provisions of a judgment or order of the court for the support of a child ~~may be punished as civil~~ constitutes contempt of court. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

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[1] NOTE: Section 14-07.1-06 was also amended by section 2 of Senate Bill No. 2369, chapter 147.

SECTION 6. AMENDMENT. Section 14-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-09. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for ~~civil~~ contempt of court. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

SECTION 7. AMENDMENT. Section 14-17-09 of the North Dakota Century Code is amended and reenacted as follows:

[2] **14-17-09. Pretrial proceedings.**

1. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing must be held. The court may order that the hearing be held before a referee. The public must be barred from the hearing. A record of the proceeding or any portion thereof must be kept if any party requests, or the court orders. Rules of evidence need not be observed.

2. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order ~~him~~ the witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that ~~his~~ the witness's testimony or evidence might tend to incriminate ~~him~~ the witness, the court may grant ~~him~~ the witness immunity from all criminal liability on account of the testimony or evidence ~~he~~ the witness is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence ~~he~~ the witness is required to produce, except for perjury committed in ~~his~~ the witness's testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence ~~is a civil~~ constitutes contempt of ~~the~~ court.

3. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

SECTION 8. AMENDMENT. Section 14-17-16 of the North Dakota Century Code is amended and reenacted as follows:

14-17-16. Enforcement of judgment or order.

1. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other

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[2] NOTE: Section 14-17-09 was also amended by section 19 of House Bill No. 1181, chapter 152.

person, including a private agency, to the extent he has furnished or is furnishing these expenses.

2. The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

3. Willful failure to obey the judgment or order of the court ~~is a civil~~ constitutes contempt of ~~the~~ court. All remedies for the enforcement of judgments apply.

SECTION 9. AMENDMENT. Section 27-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

[3] **27-09.1-07. Juror qualification form.**

1. From time to time and in a manner prescribed by the court, the clerk shall mail to the prospective juror a qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The juror qualification form ~~shall be~~ is subject to approval by the state court administrator as to matters of form and ~~shall~~ must elicit the name, address of residence, and age of the prospective juror and whether the prospective juror:

   a. Is a citizen of the United States and a resident of the county;

   b. Is able with reasonable accommodation to communicate and understand the English language;

   c. Has any physical or mental disability impairing the prospective juror's capacity to render satisfactory jury service; and

   d. Has lost the right to vote because of imprisonment resulting from conviction of a felony (section 27-09.1-08).

   The juror qualification form ~~shall~~ must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both. Notarization of the juror qualification form ~~shall~~ is not ~~be~~ required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and shall indicate that fact and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the clerk within ten days after its second receipt.

2. Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the clerk to appear forthwith

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[3] NOTE: Section 27-09.1-07 was also amended by section 1 of Senate Bill No. 2356, chapter 320.

before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, the prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk, at which time the prospective juror may be questioned, but only with regard to responses to questions contained on the form and grounds for excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

3. ~~A prospective juror who fails to appear as directed by the clerk pursuant to subsection 1 shall be ordered by the court to appear and show cause for failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for failure to appear as directed by the clerk, the prospective juror is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars or imprisoned in the county jail for not more than three days, or both.~~

~~4.~~ Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a class B misdemeanor.

SECTION 10. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Contempt of court" means:

   a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;

   b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case where by law execution cannot be awarded for the collection of the sum;

   c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer including a referee or magistrate;

   d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;

   e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court; or

   f. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

2. "Court" means a court of record of this state.

3. "Punitive sanction" includes a sanction of imprisonment if the sentence is for a definite period of time. A sanction requiring payment of a sum of money is punitive if the sanction is not conditioned upon performance or

nonperformance of an act, and if the sanction's purpose is to uphold the authority of the court.

4. "Remedial sanction" includes a sanction that is conditioned upon performance or nonperformance of an act required by court order. A sanction requiring payment of a sum of money is remedial if the sanction is imposed to compensate a party or complainant, other than the court, for loss or injury suffered as a result of the contempt.

SECTION 11. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Power of court to punish for contempt of court.

1. A court of record of this state may impose a remedial or punitive sanction for contempt of court under this chapter.

2. Upon the trial of an action or issue by a referee appointed by the court, the commission of any offense that constitutes contempt of court must be deemed contempt of the court appointing the referee, and the offense may be punished by the court in the manner and upon the proceedings in this chapter provided, except that the offense may be presented to the court by a report of the referee instead of by affidavit.

SECTION 12. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Nonsummary procedure for remedial and punitive sanctions - Joint hearing and trial - Summary procedure - Appeal.

1. a. The court on its own motion or motion of a person aggrieved by contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

   b. The state's attorney of a county, the attorney general, or a special prosecutor appointed by the court may seek the imposition of a punitive sanction by issuing a complaint charging a person with contempt of court and reciting the sanction sought to be imposed. The state's attorney, attorney general, or special prosecutor may initiate issuance of the complaint or may issue the complaint on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding. A judge is disqualified from presiding at the trial of an alleged contemnor if a reasonable likelihood or appearance of bias or prejudice will otherwise exist, if the contempt alleged involves disrespect or criticism of the judge, or if the judge has personal knowledge of disputed evidentiary facts. The person charged is entitled to a trial by jury.

   c. The court may hold a hearing on a motion for a remedial sanction jointly with a trial on a complaint seeking a punitive sanction.

2. The judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits contempt of court in the actual

presence of the court. The judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court.

3. An appeal may be taken to the supreme court from any order or judgment finding a person guilty of contempt. An order or judgment finding a person guilty of contempt is a final order or judgment for purposes of appeal.

SECTION 13. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Remedial sanctions - Punitive sanctions for nonsummary and summary procedure - Past conduct.

1. A court may impose one or more of the following remedial sanctions:

   a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;

   b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, or e of subsection 1 of section 10 of this Act. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;

   c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;

   d. An order designed to ensure compliance with a previous order of the court; or

   e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

2. a. A court, after a finding of contempt of court in a nonsummary procedure under subdivision b of subsection 1 of section 12 of this Act, may impose for each separate contempt of court a fine not exceeding one thousand dollars, imprisonment in the county jail for not more than one year, or both.

   b. A court, after a finding of contempt of court in the summary procedure under subsection 2 of section 12 of this Act, may impose for each separate contempt of court a fine of not more than five hundred dollars, imprisonment in the county jail for not more than thirty days, or both.

3. A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

SECTION 14. AMENDMENT. Section 27-10-07 of the North Dakota Century Code is amended and reenacted as follows:

27-10-07. Order to show cause or warrant of attachment for contempt not committed in presence of judge. ~~When~~ In addition to the procedure set out in section 12 of this Act, when an act punishable as ~~a criminal or civil~~ contempt ~~by a court of record of this state~~ is not committed in the immediate view and presence of the court, the court, upon being satisfied ~~by affidavit~~ of the commission of the offense, ~~shall~~ may:

1. ~~Make an order requiring~~ Order the accused to show cause at a specified time and place ~~therein specified~~ why ~~he~~ the accused should not be punished for the alleged offense; or

2. Issue a warrant of attachment directed to the sheriff of any county where the accused may be found commanding ~~him~~ the sheriff to arrest ~~the accused~~ and bring ~~him~~ the accused before the court ~~forthwith or~~ at a specified time and place ~~therein specified~~ to answer for the alleged offense.

SECTION 15. AMENDMENT. Section 27-10-08 of the North Dakota Century Code is amended and reenacted as follows:

27-10-08. Nature of proceedings upon order to show cause or warrant of attachment for contempt. An order to show cause issued pursuant to section 27-10-07 may be made in the action or proceeding in or respecting which the offense was committed, either before or after the final judgment or order therein, and is equivalent to a notice of motion. The subsequent proceedings ~~thereupon~~ must be taken in the action or proceeding as upon a motion made therein. ~~If an attachment is issued pursuant to section 27-10-07, it must be deemed an original special proceeding by the state as plaintiff against the accused as defendant.~~

SECTION 16. AMENDMENT. Section 27-10-09 of the North Dakota Century Code is amended and reenacted as follows:

27-10-09. Papers to be served on person arrested for contempt. When a person accused of ~~a criminal or civil~~ contempt is arrested under a warrant of attachment, a copy of the warrant and of the affidavit or report of a referee upon which it is issued must be served upon the accused.

SECTION 17. AMENDMENT. Section 27-10-10 of the North Dakota Century Code is amended and reenacted as follows:

27-10-10. Amount of undertaking for appearance of accused may be fixed and endorsed on warrant by judge. When a warrant of attachment of a person accused of ~~a civil or criminal~~ contempt is issued, the court, by an endorsement thereon, may fix a sum in which the accused may give an undertaking for ~~his~~ the accused's appearance to answer.

SECTION 18. AMENDMENT. Section 27-10-11 of the North Dakota Century Code is amended and reenacted as follows:

27-10-11. Duties of sheriff after arrest if undertaking not given by accused. When a person accused of ~~a criminal or civil~~ contempt is arrested upon a warrant of attachment, the sheriff, if the amount of the undertaking for the appearance of the accused is not endorsed on the warrant, or if such an endorsement is made and an undertaking is not given as prescribed in section ~~27-10-12~~ 27-10-10, shall keep the accused in ~~his~~ custody until the further direction of the court. When from sickness or other cause the accused is physically unable to attend before the court,

that fact is a sufficient excuse to the sheriff for not producing ~~him~~ the accused as required by the warrant. In that case, the sheriff shall produce ~~him~~ the accused as directed by the court after ~~he~~ the accused becomes able to attend. The sheriff in any case need not confine the accused in prison or otherwise restrain ~~him of his liberty~~ the accused except so far as is necessary in order to secure ~~his~~ the accused's personal attendance.

SECTION 19. AMENDMENT. Section 27-10-13 of the North Dakota Century Code is amended and reenacted as follows:

27-10-13. Procedure on return of warrant of attachment or order to show cause for contempt. When a person accused of ~~a criminal or civil~~ contempt is produced by virtue of a warrant of attachment, or appears upon the return of such a warrant or of an order to show cause, the court~~, unless the accused admits the offense charged, shall cause a complaint in the form of an affidavit to be filed specifying the facts and circumstances of the offense charged against him. The accused, under oath, shall make written answer thereto by affidavit within such reasonable time as the court allows therefor and either party may produce affidavits or other proof contradicting or corroborating such answer. Upon the original affidavits, the answer, and subsequent proofs, the court shall determine whether the accused has committed the offense charged~~ shall proceed pursuant to subsection 1 of section 12 of this Act.

SECTION 20. AMENDMENT. Section 27-10-18 of the North Dakota Century Code is amended and reenacted as follows:

27-10-18. Procedure when person arrested gives undertaking for appearance but fails to appear. When a person arrested by authority of a warrant of attachment for contempt has given an undertaking ~~for his appearance~~ as prescribed in this chapter and fails to appear on the return day of the warrant, the court may issue another warrant or may make an order directing the undertaking to be prosecuted, or both.

SECTION 21. AMENDMENT. Section 27-10-19 of the North Dakota Century Code is amended and reenacted as follows:

27-10-19. Undertaking may be ordered prosecuted by and in behalf of party aggrieved - Extent of recovery. An order directing an undertaking given for the appearance of a person accused of ~~a criminal or civil~~ contempt to be prosecuted, in the discretion of the court, may direct the prosecution thereof by and in the name of any party aggrieved by the misconduct of the accused. In such a case, the plaintiff may recover damages to the extent of the loss or injury sustained ~~by him~~ by reason of the misconduct, together with the costs and expenses of prosecuting the proceedings in which the warrant was issued, but ~~such~~ the recovery may not exceed the sum specified in the undertaking.

SECTION 22. AMENDMENT. Section 27-10-20 of the North Dakota Century Code is amended and reenacted as follows:

27-10-20. When undertaking ordered prosecuted in name of state - Disposition of moneys collected. In an order for the prosecution of an undertaking given for the appearance of a person accused of ~~a criminal or civil~~ contempt, the court, whenever it thinks proper to do so, may, or whenever no party is aggrieved by the misconduct of ~~such~~ the person, shall, direct ~~such~~ a prosecution to be made in the name of this state by the attorney general or by the state's attorney of the county in which the undertaking was given. In an action brought pursuant to such

direction, the state is entitled to recover the entire sum specified in the undertaking. Out of the money collected, the court which directed the prosecution must order the person at whose instance a warrant was issued to be paid such a sum as it thinks proper to satisfy the costs and expenses incurred by ~~him~~ the person and to compensate ~~him~~ the person for the loss or injury sustained ~~by him~~ by reason of the misconduct. The residue of the money must be paid into the treasury of this state to the credit of the school fund.

SECTION 23. AMENDMENT. Section 27-10-23 of the North Dakota Century Code is amended and reenacted as follows:

27-10-23. Contempt of witness before notary public, officer, board, or tribunal. If a witness fails to attend for examination when duly required to do so, or refuses to be sworn, or to answer as a witness, before a notary public or any other officer, board, or tribunal authorized by law to require ~~his~~ the witness's attendance for examination and to take testimony, ~~such~~ the notary public, officer, board, or tribunal shall certify ~~such~~ that fact to the judge of the district court of the county in which ~~such~~ the witness resides or in which ~~such~~ the witness may be present. ~~Such~~ The judge, by order, then shall require ~~such~~ the witness to attend ~~before him for~~ an examination before the judge at a specified time and place ~~specified in the order~~. Upon the return day of the order, the examination of the witness must be conducted before the judge, and for the failure of ~~such~~ the witness to attend, or to be sworn, or to answer as a witness, or for a refusal of ~~such~~ the witness to do any act required of ~~him~~ the witness by law, ~~he~~ the witness may be punished as for a contempt in the manner provided in this chapter.

SECTION 24. AMENDMENT. Section 27-19-07 of the North Dakota Century Code is amended and reenacted as follows:

27-19-07. Contempt powers. In addition to other authority conferred by this chapter, the courts of this state have the power to hold persons in ~~civil or criminal~~ contempt of court in order to maintain the dignity of the courts and enforce their orders.

SECTION 25. AMENDMENT. Section 27-20-55 of the North Dakota Century Code is amended and reenacted as follows:

27-20-55. Contempt powers. The court may punish a person for contempt of court ~~for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders subject to the laws relating to the procedures therefor and the limitations thereon~~ under chapter 27-10.

SECTION 26. AMENDMENT. Section 28-21-12.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-12.1. Property delivery - Penalty. Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver ~~such~~ the property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor and may be ~~subject to civil~~ guilty of contempt of court.

SECTION 27. AMENDMENT. Section 29-10.1-39 of the North Dakota Century Code is amended and reenacted as follows:

29-10.1-39. Violation constitutes contempt. Any person who willfully violates any provision of this chapter is guilty of ~~criminal~~ contempt of court.

SECTION 28. AMENDMENT. Section 42-02-10 of the North Dakota Century Code is amended and reenacted as follows:

42-02-10. Injunction - Penalty for violation. Any person violating the terms of an injunction for the abatement of a nuisance in any place in the state of North Dakota ~~shall be~~ is guilty of ~~criminal~~ contempt ~~under section 12.1-10-01~~ of court.

SECTION 29. AMENDMENT. Section 42-02-11 of the North Dakota Century Code is amended and reenacted as follows:

42-02-11. Contempt proceeding. A contempt proceeding arising out of the violation of any injunction granted under the provisions of this chapter ~~shall~~ must be conducted in the manner prescribed for the conduct of such proceeding in ~~title 27~~ chapter 27-10.

SECTION 30. AMENDMENT. Section 51-15-06.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-15-06.1. Assurance of discontinuance. The attorney general may accept an assurance of discontinuance of any act or practice the attorney general determines to be in violation of this chapter or chapter 51-12, 51-13, 51-14, or 51-18 from any person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has as a principal place of business or in Burleigh County. An assurance of discontinuance may not be considered an admission of a violation. However, failure to comply with an assurance of discontinuance which has been approved by the district court is ~~punishable as criminal~~ contempt of court.

SECTION 31. AMENDMENT. Subsection 7 of section 54-35-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. To issue subpoenas or subpoenas duces tecum in the manner provided in sections 54-03.2-08 and 54-03.2-09. Committees of the council may issue subpoenas and subpoenas duces tecum in the same manner if specifically authorized by the council. Failure to obey a subpoena issued by the council, or one of its committees, is ~~a civil~~ contempt.

[4] **SECTION 32. REPEAL.** Sections 12.1-10-01, 27-09.1-16, 27-10-03, 27-10-04, 27-10-05, 27-10-06, 27-10-12, 27-10-14, 27-10-15, 27-10-16, 27-10-17, 27-10-21, 27-10-22, 27-10-24, 27-10-25, 27-10-26, and 27-10-27 of the North Dakota Century Code are repealed.

Approved March 19, 1993
Filed March 19, 1993

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[4] NOTE: Section 27-10-05 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 90

SENATE BILL NO. 2469
(Senator Nelson)

RESERVED CORPORATE NAME CANCELLATION

AN ACT to amend and reenact section 10-19.1-14 of the North Dakota Century Code, relating to reserved corporate name requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in chapter 10-23. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in chapter 10-23.

4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in chapter 10-23.

5. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 91

HOUSE BILL NO. 1506
(Representative C. Carlson)

CORPORATE NAME CHANGES

AN ACT to create and enact a new subsection to section 10-23-04 and a new subsection to section 10-28-01 of the North Dakota Century Code, relating to the filing fee for cancellation of a reserved corporate name; to amend and reenact sections 10-19.1-16, 10-19.1-23, 10-22-09, 10-22-13, 10-24-07.1, 10-24-09, 10-24-36, 10-27-09, and 10-27-13 of the North Dakota Century Code, relating to requirements of filings with the secretary of state by domestic and foreign business and nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.**

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:

   a. The name of the corporation.

   b. The present record address of its registered office.

   c. The name of its registered agent.

   d. If the address of its registered office is to be changed, the new address of its registered office.

   e. If its registered agent is to be changed, the name of its new registered agent.

   f. If the name of its registered agent is to be changed, the name of its registered agent as changed.

   g. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

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[1] NOTE: Section 10-19.1-16 was also amended by section 10 of Senate Bill No. 2223, chapter 54.

h. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.

2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision e or h, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

4. The fee prescribed in chapter 10-23 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 2. AMENDMENT. Section 10-19.1-23 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-23. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as provided in chapter 10-23, then the articles of amendment must be recorded in the office of the secretary of state.

A corporation which amends its name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 3. AMENDMENT. Section 10-22-09 of the North Dakota Century Code is amended and reenacted as follows:

10-22-09. Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

   a. The name of the corporation.

   b. ~~The address of its then registered office.~~

   ~~c.~~ When changing the address of its registered office, the address to which the registered office is to be changed.

   ~~d. The name of its current registered agent.~~

~~e.~~ c. When changing its registered agent, the name of its successor registered agent.

~~f.~~ d. That the addresses of its registered office and the business office of its registered agent, as changed, will be identical.

~~g.~~ e. That the change was authorized by resolution duly adopted by its board of directors.

The statement must be executed by the corporation by its president or a vice president and delivered to the secretary of state. If the registered agent is changed, the consent of the successor agent to act in that capacity must accompany the filing. ~~If a~~ A registered agent ~~changes~~ may change its business address ~~to a place within the same county it may change such address~~ and the address of the registered office of any corporations of which it is the registered agent by filing a statement as required above with one copy for each corporation listed on the certificate, except that it need be signed only by the registered agent, need not be responsive to subdivision e c or ~~g~~ e and must recite that a copy of the statement has been mailed to each listed corporation. If the secretary of state finds that the statement conforms with this section, the secretary of state shall file the statement, and upon the filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, becomes effective.

The fee prescribed in chapter 10-23 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

2. Any registered agent of a foreign corporation may resign upon filing a written notice ~~executed in duplicate~~, with the secretary of state, who shall mail a copy thereof to the foreign corporation at its principal executive office. The appointment of the agent terminates upon the expiration of thirty days after receipt of the notice by the secretary of state.

SECTION 4. AMENDMENT. Section 10-22-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-22-13. Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority when the corporation changes its name or when purposes other than those set forth in its last application for a certificate of authority are sought by making application to the secretary of state. The application, together with the required fee, must be filed within thirty days of the corporate action necessitating the filing.

The requirements for the form and contents of the application, the manner of its execution, its filing with the secretary of state, the issuance of an amended certificate of authority, and the effect of the amended certificate are the same as the original application for a certificate of authority.

An application must be accompanied by a certified statement of amendment duly authenticated by the proper officer of the state or country where the corporation is incorporated.

A foreign corporation which amends its name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 5. A new subsection to section 10-23-04 of the North Dakota Century Code is created and enacted as follows:

Filing a cancellation of reserved corporate name, ten dollars.

SECTION 6. AMENDMENT. Section 10-24-07.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-07.1. Reserved name.

1. The exclusive right to the use of a corporate name permitted by section 10-24-07 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, with the fees provided in chapter 10-28. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, with the fees provided in chapter 10-28.

4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in chapter 10-28.

SECTION 7. AMENDMENT. Section 10-24-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-09. Change of registered office or registered agent. A corporation may change its registered office or registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. ~~The address of its then registered office.~~

~~3.~~ If the address of its registered office is to be changed, the address to which the registered office is to be changed.

~~4. The name of its then registered agent.~~

~~5.~~ 3. If its registered agent is to be changed, the name of its successor registered agent.

~~6.~~ 4. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~7.~~ 5. That the change was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that the statement conforms to the provisions of chapters 10-24 through 10-28, the secretary of state shall file the statement and upon such filing the change of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent of a corporation may resign as agent upon filing a written notice with the secretary of state, who shall forthwith mail a copy to the corporation ~~in care of an officer who is not the resigning registered agent~~ at the last known address ~~of the officer~~. The appointment of the agent shall terminate thirty days after receipt of the notice by the secretary of state.

SECTION 8. AMENDMENT. Section 10-24-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-36. Filing of articles of amendment. The articles of amendment must be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as prescribed in chapters 10-24 through 10-28, the secretary of state shall endorse on the articles of amendment the word "filed" and the month, day, and year of the filing.

A corporation which amends its name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 9. AMENDMENT. Section 10-27-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-09. Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or its registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. ~~The address of its then registered office.~~

~~3.~~ If the address of its registered office is to be changed, the address to which the registered office is to be changed.

~~4. The name of its then registered agent.~~

~~5.~~ 3. If its registered agent is to be changed, the name of its successor registered agent.

~~6.~~ 4. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~7.~~ 5. That the change was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that the statement conforms to the provisions of this chapter, the secretary of state shall file the statement and upon filing the change of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent in this state appointed by a foreign corporation may resign by filing a written notice with the secretary of state who shall forthwith mail a copy to the foreign corporation at its principal office ~~in the state or country under the laws of which it is incorporated~~. The appointment of the registered agent shall terminate thirty days after receipt of the notice by the secretary of state.

SECTION 10. AMENDMENT. Section 10-27-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-13. Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority if it changes its corporate name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the form and contents of the application, the manner of its execution or its filing with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof are the same as in the case of an original application for a certificate of authority.

A foreign corporation which amends its name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 11. A new subsection to section 10-28-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Filing a cancellation of reserved corporate name, ten dollars.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 92

SENATE BILL NO. 2222
(Senators W. Stenehjem, Langley, Krebsbach)
(Representatives Gorman, Mahoney, Shide)

LIMITED LIABILITY COMPANIES

AN ACT to create and enact chapter 10-32, a new section to chapter 57-38, section 57-38-60.2, and a new section to chapter 57-38.1 of the North Dakota Century Code, relating to enactment of the North Dakota Limited Liability Company Act, the income tax filing method of a limited liability company, and personal liability for income taxes of a governor or manager of a limited liability company; and to amend and reenact sections 10-30.1-01, 10-30.1-04, 10-30.1-06, 10-30.2-01, 10-30.2-11, 10-30.2-12, 10-30.2-14, 40-57.1-02, 40-57.1-04.3, 40-57.2-01, 40-57.3-03, subsection 5 of section 57-38-01, subdivision q of subsection 1 of section 57-38-01.2, subsection 3 of section 57-38-30.5, subsection 3 of section 57-38-45, and subsection 3 of section 57-38-67 of the North Dakota Century Code, relating to limited liability companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Qualified entity" means a business that:

   a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended.

   b. Is a business which through a process employing knowledge and labor adds value to a product for resale.

   c. Has its principal office in this state and is primarily doing business within this state.

   However, after July 1, 1989, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities.

2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.

3. "Venture capital corporation" means a corporation <u>or limited liability company</u> that is organized for the specific purposes and under the specific conditions provided for in this chapter.

SECTION 2. AMENDMENT. Section 10-30.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-04. Venture capital corporation - Incorporation.

1. To carry out the purposes of this chapter, venture capital corporations may be formed under chapters 10-19.1 through 10-23 if a corporation, or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a venture capital corporation must comply with subsections 2 through 9.

2. The purpose of a venture capital corporation must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.

3. Each director or governor of a venture capital corporation must be a North Dakota resident, and must have a minimum investment in the venture capital corporation of one thousand dollars.

4. A venture capital corporation will provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.

5. No business may be transacted or indebtedness incurred by the venture capital corporation, except such as is incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares or membership interests, until the venture capital corporation receives consideration for such shares or membership interests equal to at least five hundred thousand dollars, which amount will be the initial stated capital of the venture capital corporation.

6. All consideration received from the sale of shares or membership interests must be placed in an interest-bearing escrow account in the Bank of North Dakota, except that up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares or membership interests.

7. If at any time within one year of the issuance of the certificate of incorporation or certificate of organization of the venture capital corporation its stated capital equals at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws or the articles of organization and operating agreement of the venture capital corporation, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation for use and disposition according to its articles of incorporation and bylaws or the articles of organization and operating agreement.

8. If within one year of the issuance of the certificate of incorporation or certificate of organization of the venture capital corporation its stated capital has not at any time equaled at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws or by the articles of organization and operating agreement of the venture capital corporation, its certificate of incorporation or certificate of organization will be terminated, the venture capital corporation must be dissolved, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to their investments.

9. Prior to any investment in a venture capital corporation, the venture capital corporation must make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.

10. If a venture capital corporation does not invest or provide financing with eighty percent of the funds received from investors

within two years of receiving the funds, the venture capital corporation must be dissolved and all funds held by the corporation must be returned to the investors in proportion to their investments.

SECTION 3. AMENDMENT. Section 10-30.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-06. Amount of tax credit. Subject to sections 10-30.1-07 and 10-30.1-08, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under this chapter. However, a taxpayer is not entitled to a tax credit if the taxpayer has purchased stock or membership interests from and sold stock or membership interests back to the venture capital corporation in a manner that indicates that the sole purpose of the taxpayer's activities was to avoid paying state income tax by receiving additional tax credits.

SECTION 4. AMENDMENT. Section 10-30.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.

2. "Corporation" means the corporation established by section 10-30.2-02.

3. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, limited liability company, or corporation domiciled in North Dakota, or a limited liability company or corporation, including a wholly owned subsidiary of a foreign limited liability company or corporation, that does business primarily in North Dakota or does substantially all of its production in North Dakota.

4. "Professional investor" means any bank, bank holding company, savings institution, trust company, credit union, insurance company, or any

person, limited liability company, partnership, or other entity whose principal business is making venture capital investments.

5. "Shareholder" means a registered owner of shares in the corporation.

SECTION 5. AMENDMENT. Section 10-30.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **10-30.2-11. Tax credits for investment by banks, savings and loan associations, trust companies, and insurance companies.** A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years.

SECTION 6. AMENDMENT. Section 10-30.2-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **10-30.2-12. Income tax credits for investment.** A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 7. AMENDMENT. Section 10-30.2-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-14. State and board of director immunity from liability. The state of North Dakota and the board of directors are not liable for any damage incurred by an investor in the corporation, or a separate legal entity such as a limited

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[1] NOTE: Section 10-30.2-11 was also amended by section 3 of Senate Bill No. 2449, chapter 72.

[2] NOTE: Section 10-32.2-12 was also amended by section 4 of Senate Bill No. 2449, chapter 72.

partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public.

SECTION 8. Chapter 10-32 of the North Dakota Century Code is created and enacted as follows:

10-32-01. Citation. This chapter may be cited as the "North Dakota Limited Liability Company Act".

10-32-02. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.

2. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which may not be a post-office box.

3. "Agreement to give transfer consent" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, under which the members agree in advance to give any consent referred to in subsection 2 of section 10-32-32.

4. "Articles" or "articles of organization" means:

   a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination.

   b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.

5. "Board" or "board of governors" means the board of governors of a limited liability company.

6. "Board member" means:

   a. An individual serving on the board of governors in the case of a limited liability company; and

   b. An individual serving on the board of directors in the case of a corporation.

7. "Business continuation agreement" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, made after the limited liability company has incurred an event of dissolution, under which the members:

a. Agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and

b. Specify the terms and conditions under which the business continuation will occur.

8. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.

9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.

11. "Contribution agreement" means an agreement between a person and a limited liability company under which:

a. The person agrees to make a contribution in the future; and

b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

12. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:

a. The person has the right, but not the obligation, to make a contribution in the future; and

b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

13. "Dissolution" means that the limited liability company has incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.

14. "Dissolution avoidance consent" means the consent of all remaining members:

a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and

b. That the limited liability company must be continued as a legal entity without dissolution.

15. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

16. "Filed with the secretary of state" means that a signed original of a document together with the fees provided in section 10-32-150, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, and record the document in the office of the secretary of state.

17. "Financial rights" means a member's rights:

    a. To share in profits and losses as provided in section 10-32-36;

    b. To share in distributions as provided in section 10-32-60;

    c. To receive interim distributions as provided in section 10-32-61; and

    d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.

18. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

19. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

20. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

21. "Governing board" means:

    a. The board of governors in the case of a limited liability company; and

    b. The board of directors in the case of a corporation.

22. "Governor" means an individual serving on the board of governors.

23. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

24. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

25. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

26. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

27. "Manager" means a person elected, appointed, or otherwise designated as a manager by the board of governors, and any other person considered elected as a manager pursuant to section 10-32-92.

28. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.

29. "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 10-32-31, a member's governance rights, and a member's right to assign governance rights as provided in section 10-32-32.

30. "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.

    a. In all other cases, notice is given to a person:

        (1) When mailed to the person at an address designated by the person or at the last known address of the person;

        (2) When handed to the person; or

        (3) When left at the office of the person with a clerk or other person in charge of the office; or

            (a) If there is no one in charge, when left in a conspicuous place in the office; or

            (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there.

    b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.

    c. Notice is considered received when it is given.

31. "Operating agreement" means rules, resolutions, or other provisions that:

a. Relate to the management of the business or the regulation of the affairs of the limited liability company; and

b. Have been made expressly part of the operating agreement by the action, taken from time to time under section 10-32-69, by the board of governors or the members.

32. "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

33. "Owners" means:

a. Members in the case of a limited liability company; and

b. Shareholders in the case of a corporation.

34. "Ownership interests" means:

a. Membership interests in the case of a limited liability company; and

b. Shares in the case of a corporation.

35. "Parent" of a specified limited liability company means a limited liability company or corporation that directly, or indirectly through related limited liability companies or corporations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

36. "Person" includes an individual and an organization.

37. "Pertains" means a contribution "pertains":

a. To a particular series when the contribution is made in return for a membership interest in that particular series.

b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.

A contribution that pertains to a series does not pertain to the class of which the series is a part.

38. "Principal executive office" means an office where the elected or appointed president of the limited liability company has an office. If the limited liability company has no elected or appointed president, "principal executive office" means the registered office of the limited liability company.

39. "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

40. "Related limited liability company" of a specified limited liability company means a parent or subsidiary of the specified limited liability

company or another subsidiary of a parent of the specified limited liability company.

41. "Required records" are those records required to be maintained under section 10-32-51.

42. "Security" has the meaning given it in subsection 13 of section 10-04-02.

43. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

44. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors or the required proportion of the voting power of membership interests present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

45. "Subsidiary" of a specified limited liability company means:

    a. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company; or

    b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.

46. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.

47. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.

48. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:

    a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or

b. Is considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.

49. "Vote" includes authorization by written action.

50. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 10-32-131.

51. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

10-32-03. Reservation of legislative power. The legislative assembly has the power to prescribe such regulations, provisions, and limitations as it determines to be advisable, which are binding upon any and all limited liability companies subject to this chapter. The legislative assembly may amend, repeal, or modify this chapter.

1. Every grant of limited liability company power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly. Any statute of this state relating to limited liability companies may be repealed or amended. The alteration, suspension, amendment, or repeal, or the dissolution of any limited liability company, does not take away or impair any remedy given against the limited liability company, its members, or managers for any liability which has been previously incurred.

2. Either or both houses of the legislative assembly may examine the affairs and conditions of any limited liability company in this state at any time. For that purpose, any committee appointed by the legislative assembly:

   a. May administer all necessary oaths to the governors, managers, and members of a limited liability company;

   b. May examine them on oath in relation to its affairs and condition;

   c. May examine the safes, books, papers, and documents belonging to such limited liability company or pertaining to its affairs and condition; and

   d. May compel the production of all keys, books, papers, and documents by a summary process to be issued on application to any district court or any district judge under the rules the court prescribes.

10-32-04. Purposes. A limited liability company may be organized under this chapter for any business purpose, unless some other statute of this state requires organization for any of those purposes under a different law. Unless otherwise provided in its articles of organization, a limited liability company has general business purposes.

10-32-05. Organizers. One or more individuals of the age of eighteen years or more may act as organizers of a limited liability company by filing with the secretary of state articles of organization for the limited liability company.

10-32-06. Two-member requirement. A limited liability company must have two or more members at the time of its formation. A limited liability company must be dissolved under subdivision e of subsection 1 of section 10-32-109 whenever the limited liability company ceases to have at least two members unless the remaining member admits a new member within ninety days of the termination of the continued membership of the former member.

10-32-07. Articles of organization.

1. The articles of organization must contain:

   a. The name of the limited liability company;

   b. The address of the principal executive office;

   c. The address of the registered office of the limited liability company and the name of its registered agent at that address;

   d. The name and address of each organizer;

   e. The limited period of existence for the limited liability company, which must be a period of thirty years or less from the date the articles of organization are filed with the secretary of state;

   f. A statement as to whether upon the occurrence of any event under subdivision e of subsection 1 of section 10-32-109 that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; and

   g. A statement as to whether the members have the power to enter into a business continuation agreement.

2. The following provisions govern a limited liability company unless modified in the articles of organization:

   a. A limited liability company has general business purposes (section 10-32-04);

   b. A limited liability company has certain powers (section 10-32-23);

   c. The power to adopt, amend, or repeal the operating agreement is vested in the board of governors (section 10-32-68);

   d. A limited liability company must allow cumulative voting for governors (section 10-32-76);

   e. The affirmative vote of a majority of governors present is required for an action of the board of governors (section 10-32-83);

   f. A written action by the board of governors taken without a meeting must be signed by all governors (section 10-32-84);

g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements (subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59);

h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series (subdivisions a and b of subsection 5 of section 10-32-56);

i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (subdivision b of subsection 5 of section 10-32-56);

j. The restatement of value of previous contributions is to be determined according to a specified process (subsections 3 and 4 of section 10-32-57);

k. A member has certain preemptive rights, unless otherwise provided by the board of governors (section 10-32-37);

l. The affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote (subsection 1 of section 10-32-43);

m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 10-32-45);

n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 10-32-60);

o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 10-32-36);

p. A written action by the members taken without a meeting must be signed by all members (section 10-32-43);

q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 10-32-62); and

r. A member is not subject to expulsion (subsection 2 of section 10-32-30).

3. The following provisions govern a limited liability company unless modified either in the articles of organization or in the operating agreement:

a. Governors serve for an indefinite term that expires at the next regular meeting of members (section 10-32-72);

b. The compensation of governors is fixed by the board of governors (section 10-32-74);

c. A certain method must be used for removal of governors (section 10-32-78);

d. A certain method must be used for filling board of governor vacancies (section 10-32-79);

e. If the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (subsection 1 of section 10-32-80);

f. A governor may call a board of governors meeting, and the notice of the meeting need not state the purpose of the meeting (subsection 3 of section 10-32-80);

g. A majority of the board of governors is a quorum for a board meeting (section 10-32-82);

h. A committee consists of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present (subsection 2 of section 10-32-85);

i. The board may establish a special litigation committee (section 10-32-85);

j. The president and treasurer have specified duties, until the board of governors determines otherwise (section 10-32-89);

k. Managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 10-32-95);

l. Regular meetings of members need not be held, unless demanded by a member under certain conditions (section 10-32-38);

m. In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members (subsection 2 of section 10-32-40);

n. For a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 10-32-44);

o. The board of governors may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (subsection 1 of section 10-32-45);

p. Indemnification of certain persons is required (section 10-32-99);

q. The board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (subsection 1 of section 10-32-64); and

r. Members have no right to interim distributions except as provided through the operating agreement or an act of the board of governors (section 10-32-61).

4. The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company may be included either in the articles of organization or, except for naming persons to serve as the first board of governors, fixing a greater than majority governor or member vote, establishing the rights and priorities for distributions and the rights to share in profits and losses, or giving or prescribing the manner of giving voting rights to persons other than members otherwise than pursuant to the articles of organization, or eliminating or limiting a governor's personal liability, in the operating agreement:

a. The persons to serve as the first board of governors may be named in the articles of organization (subsection 1 of section 10-32-69);

b. A manner for increasing or decreasing the number of governors may be provided (section 10-32-70);

c. Additional qualifications for governors may be imposed (section 10-32-71);

d. Governors may be classified (section 10-32-75);

e. The day or date, time, and place of board of governors meetings may be fixed (subsection 1 of section 10-32-80);

f. Absent governors may be permitted to give written consent or opposition to a proposal (section 10-32-81);

g. A larger than majority vote may be required for board of governor action (section 10-32-83);

h. Authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the president (section 10-32-89);

i. Additional managers may be designated (section 10-32-90);

j. Additional powers, rights, duties, and responsibilities may be given to managers (section 10-32-91);

k. A method for filling vacant offices may be specified (subsection 3 of section 10-32-94);

l. The day or date, time, and place of regular member meetings may be fixed (subsection 3 of section 10-32-38);

m. Certain persons may be authorized to call special meetings of members (subsection 1 of section 10-32-39);

n. Notices of member meetings may be required to contain certain information (subsection 3 of section 10-32-40);

o. A larger than majority vote may be required for member action (section 10-32-42);

p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members (subsection 3 of section 10-32-45);

q. Limited liability company actions giving rise to dissenter rights may be designated (subdivision d of subsection 1 of section 10-32-55); and

r. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles (subsection 4 of section 10-32-86).

5. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

6. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

10-32-08. Filing of articles of organization. An original of the articles of organization must be filed with the secretary of state. If the secretary of state finds that the articles of organization conform to law and that all fees have been paid under section 10-32-150, the secretary of state shall issue a certificate of organization to the organizers or their representative.

10-32-09. Effective date of organization. The limited liability company existence begins upon the issuance of the certificate of organization. A certificate of organization is conclusive evidence that all conditions precedent and required to be performed by the organizers have been performed and that the limited liability company has been organized under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of organization or in a judicial intervention proceeding pursuant to section 10-32-119.

10-32-10. Limited liability company name.

1. The limited liability company name:

a. Must be in the English language or in any other language expressed in English letters or characters;

b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or, in the case of an organization formed pursuant to chapter 10-31, must contain the words "professional limited liability company", or the abbreviation "P.L.C.";

c. May not contain the word "corporation" or "incorporated" and may not contain the abbreviation of either or both of these words;

d. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose; and

e. May not be the same as, or deceptively similar to, the name of a domestic or foreign limited liability company, corporation, or limited

partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of organization, reserved in the manner provided in section 10-32-11, or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25 unless there is filed with the articles of organization one of the following:

(1) The written consent of the domestic or foreign limited liability company, corporation, or limited partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or

(2) A certified copy of a final judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.

3. This section and section 10-32-11 do not:

a. Abrogate or limit:

(1) The law of unfair competition or unfair practices;

(2) Chapter 47-25;

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks;

(4) Any other rights to the exclusive use of names or symbols.

b. Derogate the common law or the principles of equity.

4. A limited liability company that is merged with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a limited liability company all or substantially all of the assets of another limited liability company or domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other limited liability companies or domestic or foreign corporations, if the other limited liability company or domestic or foreign corporation was organized under the laws of, or is authorized to transact business in, this state.

5. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section,

although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

10-32-11. Reserved name.

1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.

2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.

4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.

10-32-12. Registered office and agent.

1. A limited liability company shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business, or the principal executive office of the limited liability company.

2. A limited liability company shall designate in its articles of organization a registered agent. The registered agent may be an individual residing in this state, a domestic corporation or a domestic limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in such capacity must be filed with the secretary of state, together with the fees provided in section 10-32-150.

10-32-13. Change of registered office or agent.

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 10-32-150, a statement containing:

   a. The name of the limited liability company;

   b. If the address of its registered office is to be changed, the new address of its registered office;

c. If its registered agent is to be designated or changed, the name of its new registered agent;

d. If the name of its registered agent is to be changed, the name of its registered agent as changed;

e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board of governors.

2. A registered agent of a limited liability company may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability company at its principal executive office, or to a legal representative of the limited liability company. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited liability company represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision c or f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability companies or to the legal representative of each of those limited liability companies.

10-32-14. Amendment of articles of organization. The articles of organization of a limited liability company may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each organizer may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-32-14 through 10-32-18.

10-32-15. Procedure for amendment before contribution. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the organizers or by the board of governors.

10-32-16. Procedure for amendment after contribution.

1. After any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.

2. A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning five percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members of which notice has not yet been

given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.

3. Written notice of the members' meeting setting forth the substance of the proposed amendment must be given to each member in the manner provided in section 10-32-40 for the giving of notice of meetings of members.

4. The proposed amendment is adopted:

   a. When approved by the affirmative vote of the owners of a majority of the voting power of the members present and entitled to vote; or

   b. If the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:

      (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

      (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

10-32-17. Class or series voting on amendments. The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

1. Effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;

2. Effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

3. Change the rights or preferences of the membership interests of the class or series;

4. Change the membership interests of the class or series into the same or a different number of membership interests of the same or another class or series;

5. Create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

6. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;

7. Limit or deny any existing preemptive rights of the membership interests of the class or series; or

8. Cancel or otherwise affect distributions on the membership interests of the class or series.

10-32-18. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the limited liability company;

2. The amendment adopted;

3. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of membership interests, a statement of the manner in which it will be effected; and

4. A statement that the amendment has been adopted pursuant to this chapter.

10-32-19. Effect of amendment.

1. An amendment does not affect an existing cause of action in favor of or against the limited liability company, nor a pending suit to which the limited liability company is a party, nor the existing rights of persons other than members.

2. If the limited liability company name is changed by the amendment, a suit brought by or against the limited liability company under its former name does not abate for that reason.

10-32-20. Filing of articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.

10-32-21. Effective date of articles of amendment. Articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-32-22. Amendment of articles of organization in court-supervised reorganization.

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization or limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended for such purpose so as to:

   a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.

   b. Repeal, alter, or amend the operating agreement of the limited liability company.

   c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.

   d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.

   e. Constitute or reconstitute and classify or reclassify the board of governors and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:

   a. Articles of amendment approved by decree or order of the court must be executed and verified in duplicate by the person or persons designated or appointed by the court for that purpose and must set forth the name of the limited liability company, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the limited liability company pursuant to the provisions of an applicable statute of the United States.

   b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.

3. The articles of amendment become effective upon their acceptance by the secretary of state or at any other time within thirty days after their acceptance if the articles of amendment so provide.

4. The articles are deemed to be amended accordingly, without any action by the governors or members of the limited liability company and with the same effect as if the amendment had been adopted by the unanimous action of the governors and members.

10-32-23. Powers.

1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization.

2. A limited liability company has a limited duration of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter duration.

3. A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding in its limited liability company name.

4. A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

5. A limited liability company may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

6. A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality thereof.

7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.

8. A limited liability company may invest and reinvest its funds.

9. A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.

10. A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

11. Except as otherwise prohibited by law, a limited liability company may make donations, irrespective of limited liability company benefit, for:

    a. The public welfare;

    b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes and for similar or related purposes;

    c. For the purpose of fostering national or international amateur sports competition; and

    d. The prevention of cruelty to children and animals.

12. A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related limited liability companies' managers, governors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

15. A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 10-32-24.

16. A limited liability company may adopt, amend, and repeal an operating agreement relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 10-32-68.

17. A limited liability company may establish committees of the board of governors, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.

18. A limited liability company may elect or appoint managers, employees, and agents of the limited liability company and define their duties and fix their compensation.

19. A limited liability company may accept contributions under section 10-32-56 and may enter into contribution agreements under section 10-32-58 and contribution allowance agreements under section 10-32-59.

20. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-32-97.

21. A limited liability company may make advances to its governors, managers, and employees and those of its subsidiaries as provided in section 10-32-98.

22. A limited liability company shall indemnify those persons against certain expenses and liabilities only as provided in section 10-32-99.

23. A limited liability company may conduct all or part of its business under one or more trade names.

24. A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

10-32-24. Limited liability company seal. A limited liability company may have a limited liability company seal. The use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a document or act. If a limited liability company has a limited liability company seal, the use of the seal by the limited liability company on a document is not necessary.

10-32-25. Defense of ultra vires. No act of a limited liability company and no conveyance or transfer of real or personal property to or by a limited liability company is invalid by reason of the fact that the limited liability company was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a member against the limited liability company to enjoin the doing of any act or acts or the transfer of real or personal property by or to the limited liability company. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the limited liability company is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the limited liability company or to other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract. However, anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the limited liability company, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative suit, against the incumbent or former managers or governors of the limited liability company.

3. In a proceeding by the attorney general, as provided in this chapter to dissolve the limited liability company or to enjoin the limited liability company from the transaction of unauthorized business.

10-32-26. Unauthorized assumption of limited liability company powers - Liability. All persons who assume to act as a limited liability company without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-32-27. Transaction of business outside North Dakota. By enacting this chapter the legislative assembly recognizes the limited liability company as an important and constructive form of business organization. The legislative assembly understands that:

1. Businesses organized under this chapter will often transact business in other states;

2. For businesses organized under this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and

3. Specifically, it is essential that other states recognize both the legal existence of limited liability companies formed under this chapter and the legal status of all members of these limited liability companies.

The legislative assembly therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of article IV of the Constitution of the United States, and the same comity, that North Dakota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

10-32-28. Nature of a membership interest and statement of interest owned.

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.

2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's right to vote, to share in profits and losses, and to share in distributions, as well as any assignment of the member's rights then in effect. The statement is not a certificated security, is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.

3. For the purpose of any law relating to security interests, a membership interest and financial rights are each a general intangible, and not a certificated security and not an uncertificated security.

10-32-29. Personal liability.

1. Subject to subsection 3, a member, governor, manager, or other agent of a limited liability company is not, merely on account of this status,

personally liable for the acts, debts, liabilities, or obligations of the limited liability company.

2. However, all persons who assume to act as a limited liability company without authority, are jointly and severally liable for all debts and liabilities incurred or arising as a result.

3. The case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under North Dakota law also applies to limited liability companies.

4. The limited liability described in subsections 1 and 3 continues in full force regardless of any dissolution, winding up, and termination of a limited liability company.

10-32-30. Termination of a membership interest.

1. A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under subdivision e of subsection 1 of section 10-32-109 unless dissolution avoidance consent is obtained from the remaining members. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 10-32-31 and 10-32-32.

2. Unless otherwise provided in the articles of organization, a member may not be expelled.

3. If for any reason the continued membership of a member is terminated and:

   a. If dissolution under subdivision e of subsection 1 of section 10-32-109 is avoided through dissolution avoidance consent, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or

   b. If dissolution under subdivision e of subsection 1 of section 10-32-109 is not avoided through dissolution avoidance consent, the member whose continued membership has terminated retains all governance rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

4. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, then:

   a. The member who has wrongfully resigned or retired is liable to all of the other members and to the limited liability company to the extent damaged by the wrongful resignation or retirement; and

   b. If dissolution avoidance consent is not obtained but the business of the limited liability company is continued under a business continuation agreement, then unless otherwise provided in the business continuation agreement:

(1) The member who has wrongfully resigned or retired has the right as against the successor organization to have the value of the resigned or retired membership interest determined and paid in cash; but

(2) In ascertaining the value of the resigned or retired membership interest, the value of the goodwill of the business must not be considered.

10-32-31. Assignment of financial rights.

1. Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.

2. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights.

3. A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

4. A written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

10-32-32. Assignment of a complete membership interest and of governance rights coupled with an assignment of financial rights.

1. A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all the member's financial rights. A member's governance rights are assignable, in whole or in part, only as provided in this section.

2. Subject to subsection 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Any other assignment of any governance rights is effective only if all the members, other than the

member seeking to make the assignment, approve the assignment by unanimous written consent.

3. When an assignment of governance rights coupled with financial rights is effective under subsection 2:

   a. The assignee becomes a member, if not already a member; and

   b. If the assignor does not retain any governance rights, the assignor ceases to be a member, and the unanimous written consent required under subsection 2, also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under subdivision e of subsection 1 of section 10-32-109 on account of the assignor ceasing to be a member.

4. When an assignment is effective under subsection 2:

   a. The assignee is liable for any obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and

   b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.

5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:

   a. The purported or attempted assignment is ineffective in its entirety; and

   b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.

10-32-33. Effective date of assignments. Any permissible assignment of financial rights under section 10-32-31 and of governance rights coupled with financial rights under section 10-32-32 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company.

10-32-34. Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 10-32-31. This chapter does not deprive any member or assignee of financial rights

of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

10-32-35. Powers of estate of a deceased or incompetent member.

1. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a corporation, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the remaining members give dissolution avoidance consent, then:

   a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

   b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

10-32-36. Sharing of profits and losses. Unless otherwise provided in the articles of organization or by the board of governors under subsections 5 and 6 of section 10-32-56, the profits and losses of a limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the required records.

10-32-37. Preemptive rights.

1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a member of a limited liability company has the preemptive rights provided in this section, unless denied or limited in the articles of organization or by the board of governors pursuant to subdivision b of subsection 5 of section 10-32-56.

2. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.

3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.

4. No preemptive rights arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:

   a. To be made in a form other than money;

   b. To be made or reflected pursuant to a plan of merger;

   c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;

   d. To be made pursuant to a previously made contribution allowance agreement; or

   e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.

6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.

7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:

   a. The extent of the member's preemptive right, being:

      (1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and

      (2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;

   b. The method used to determine the extent of the member's preemptive right;

   c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and

d. The time within which and the method by which the member must exercise the right.

8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

9. No amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

10-32-38. Regular meetings of members.

1. Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization or operating agreement or by subsection 2.

2. If a regular meeting of members has not been held during the immediately preceding fifteen months, a member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand. If the board of governors fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

3. A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or operating agreement, except that a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located.

4. At each regular meeting of members there must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the members may be transacted at a regular meeting.

10-32-39. Special meetings of members.

1. Special meetings of the members may be called for any purpose or purposes at any time, by:

a. The president;

b. Two or more governors;

c. A person authorized in the articles or operating agreement to call special meetings; or

d. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote.

2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote, may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a special meeting of members to be called and held on notice no later than ninety days after receipt of the demand, all at the expense of the limited liability company. If the board of governors fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

3. Special meetings must be held on the date and at the time and place fixed by the president, the board of governors, or a person authorized by the articles or operating agreement to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located.

4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the limited liability company, unless all of the members have waived notice of the meeting in accordance with subsection 4 of section 10-32-40.

10-32-40. Notice.

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.

2. In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization or operating agreement, and not more than fifty days before the date of the meeting.

3. The notice must contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by

the articles of organization or operating agreement or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.

4. A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

10-32-41. Electronic communications.

1. A conference among members by any means of communication through which the members may simultaneously hear each other during the conference constitutes a regular or special meeting of members, if the same notice is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other members so participating, and all members physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of communication described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

10-32-42. Act of members.

1. The members shall take action by the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote on that item of business except where this chapter or the articles of organization require a larger proportion. If the articles require a larger proportion than is required by this chapter for a particular action, the articles control.

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, the operating agreement, or

the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1.

10-32-43. Action without a meeting.

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If the articles so provide, any action may be taken by written action signed by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

10-32-44. Quorum. The owners of a majority of the voting power of the membership interests entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the articles or operating agreement. In no event may a quorum consist of less than one third of the membership interests entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.

10-32-45. Voting rights.

1. The board of governors may fix a date not more than fifty days, or a shorter time period provided in the articles of organization or operating agreement, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

2. Unless otherwise provided in the articles or by the board of governors under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.

3. The articles of organization may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section, but no prescription under this subsection may have the effect of transferring from an assignor of financial rights to the assignee the assignor's voting rights.

4. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from

any one of them denying the authority of that person to vote those membership interests.

5. Except as provided in subsection 4, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

10-32-46. Voting list.

1. The manager or agent having charge of the required records reflecting the membership interests of a limited liability company, shall make, at least ten days before each meeting of members, a complete list of the members entitled to vote at the meeting or at any adjournment thereof, arranged in alphabetical order, with the address and the number of membership interests held by each, which list, for a period of ten days prior to the meeting, must be kept on file at the registered office of the limited liability company and is subject to inspection by any member at any time during usual business hours. The list must also be produced and kept open at the time and place of the meeting and is subject to the inspection of any member during the whole time of the meeting. The original membership interest records are prima facie evidence as to who are the members entitled to examine the lists or required records or to vote at any meeting of members.

2. Failure to comply with the requirements of this section does not affect the validity of any action taken at the meeting. Any manager or agent having charge of the required records who fails to prepare the list of members, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting as provided in this section, is liable to any member suffering damage on account of such failure, to the extent of such damage.

10-32-47. Voting by organizations and legal representatives.

1. Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the president or another legal representative of that organization.

2. Except as provided in subsection 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to vote on any matter.

3. Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the limited liability company binding instructions on how to vote the membership interests.

4. Subject to section 10-32-35, membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, or the like may be voted by the person,

either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

5. Subject to section 10-32-35, membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

6. Membership interests reflected in the required records in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.

7. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 10-32-32.

10-32-48. Proxies.

1. A member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission. The telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the member. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable and any agreement purporting to grant an irrevocable proxy is void. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim.

3. An appointment may be terminated at will. Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.

4. The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the limited liability company before the proxy exercises the authority under that appointment.

5. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

   a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and

   b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

6. Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the limited liability company may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

7. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

8. A member may not grant any proxy to any person who is an assignee of any member's financial rights and who is not also a member.

10-32-49. Member voting agreements.

1. Except as provided in subsection 2, a written agreement among persons who are then members or who have signed contribution agreements, relating to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of subsections 1 through 7 of section 10-32-48 regarding proxies.

2. Any assignee of any member's financial rights may not be a party to an agreement under subsection 1, unless that assignee is also a member. A voting agreement may not relate to the consents referred to in subsection 2 of section 10-32-32, subsection 5 of section 10-32-58, subsection 3 of section 10-32-59, or subdivision e of subsection 1 of section 10-32-109.

10-32-50. Member-control agreements.

1. A written agreement among persons who are then members or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution, and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subsection 2.

   a. When this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles, or in the operating agreement, the same result can be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.

   b. A member-control agreement may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55, but may not waive dissenters' rights under subdivision a of subsection 2 of section 10-32-131.

   c. A member-control agreement may not include an agreement to give transfer consent.

   d. A member-control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements.

2. A written agreement among persons described in subsection 1 that relates to the control of or the liquidation, dissolution, and termination of the limited liability company, the relations among them, or any phase of the business and affairs of the limited liability company, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members by the limited liability company, or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the limited liability company, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power. An agreement authorized under this section may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion.

3. An agreement valid under subsections 1 and 2 is enforceable by persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A signed original of the agreement must be filed with the limited liability company. The limited liability company shall note in its required records that the members' interests are governed by a member-control agreement entered into under this section. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

4. A member-control agreement valid under subsections 1 and 2 is specifically enforceable.

5. A member-control agreement may waive dissenters' rights, subject to subsection 3 of section 10-32-131.

6. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

7. If an agreement authorized under this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

8. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

   a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;

   b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights and a description of the rights assigned;

   c. A copy of the articles of organization and all amendments to the articles;

   d. Copies of any currently effective written operating agreement;

   e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

   f. Financial statements required by section 10-32-52;

   g. Records of all proceedings of members for the last three years;

   h. Records of all proceedings of the board of governors for the last three years;

   i. Reports made to members generally within the last three years;

   j. Member-control agreements described in section 10-32-50;

k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:

(1) The identity of the member to whom the contribution relates;

(2) The class or series to which the contribution pertains;

(3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;

(4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and

(5) The value accorded under subsection 4 of section 10-32-56 to:

(a) Any other property transferred or promised to be transferred to the limited liability company; and

(b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;

l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:

(1) The identity of the would-be contributor;

(2) The class or series to which the future contribution pertains; and

(3) As to each future contribution to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;

m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:

(1) The identity of the would-be contributor;

(2) The class or series to which the future contribution would pertain; and

(3) As to each future contribution allowed to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;

n. An explanation of any restatement of value made under section 10-32-57;

o. Any written consents obtained from members under this chapter;

p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, all documents referred to in subsection 1.

3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a member of a limited liability company.

4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of governors for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.

5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.

6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall

convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

10-32-52. Financial statements. A limited liability company shall, upon written request by a member, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

10-32-53. Actions by members. No action may be brought in this state for violations of this chapter by a member in the right of a domestic or foreign limited liability company unless the plaintiff is a member at the time of the transaction of which plaintiff complains, or the plaintiff's membership interests thereafter devolved upon the plaintiff by operation of law from a person who was a member at such time.

1. In any action thereafter instituted in the right of any domestic or foreign limited liability company by the member, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.

2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign limited liability company by the owner of less than five percent of the membership interests, unless the membership interest of such owner has a market value in excess of twenty-five thousand dollars, the limited liability company in whose rights such action is brought is entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The limited liability company has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

10-32-54. Rights of dissenting members.

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

   a. An amendment of the articles of organization that materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

      (1) Alters or abolishes a preferential right of the membership interests;

      (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

      (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

      (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

      (5) Changes a member's right to resign or retire;

      (6) Establishes or changes the conditions for or consequences of expulsion;

      (7) Changes the statement required under subdivision e of subsection 1 of section 10-32-07; or

      (8) Changes the statement required under subdivision f of subsection 1 of section 10-32-07.

   b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company not made in the usual or regular course of its business, but not including a disposition in dissolution described in subsection 4 of section 10-32-113, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

   c. A plan of merger to which the limited liability company is a party, except as provided in paragraph 1 of subdivision a of subsection 2 of section 10-32-131 and subject to subsection 3 of section 10-32-131;

   d. A plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the

acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, the operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or

f. A resolution of the board of governors under subsection 2 of section 10-32-131 to implement a business continuation agreement.

2. The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subsection 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.

10-32-55. Procedures for asserting dissenters' rights.

1. For purposes of this section:

a. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under subsection 1 of section 10-32-54 and includes any successor by merger.

b. "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54.

c. "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.

d. "Member" includes a former member when dissenters' rights exist because:

(1) The membership of that former member has terminated causing dissolution; and

(2) The dissolved limited liability company has then either entered into a winding up merger under subsection 3 of section 10-32-112 or has disposed of its assets pursuant to a business continuation agreement under subsection 2 of section 10-32-131.

2. If a limited liability company calls a member meeting at which any action described in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 10-32-54 and this section, and if applicable, subsections 2 and 3 of section 10-32-131. For members who have assigned some or all of their financial rights, the description must also include the procedures under subsection 8.

3. If the proposed action must be approved by the members, a member who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

4. After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to all members who have complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:

   a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

   b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

   c. A copy of section 10-32-54, this section and, if applicable, subsections 2 and 3 of section 10-32-131.

5. In order to receive the fair value of the membership interests, a dissenting member must demand payment within thirty days after the notice was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

6. After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subsections 3, 4, and 5, the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

   a. The limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the limited liability company action, together with the latest available interim financial statements;

   b. An estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

   c. A copy of section 10-32-54, this section, and, if applicable, subsections 2 and 3 of section 10-32-131.

7. The limited liability company may withhold the remittance described in subsection 6 from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subsections 3, 4, and 5, the limited liability company shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subsection 8. Failure to do so

entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 9 and 10 apply.

8. If a dissenter believes that the amount remitted under subsections 5, 6, and 7, is less than the fair value of the membership interests plus interest, the dissenter may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within thirty days after the limited liability company mails the remittance under subsections 5, 6, and 7, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.

9. If the limited liability company receives a demand under subsection 8, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subsection 8 and who have not reached agreement with the limited liability company. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section, and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

10. The court shall determine the costs and expenses of a proceeding under subsection 9, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment is found to be arbitrary, vexatious, or not in good faith.

11. If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and

expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

12. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

13. When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subsections 1 through 12 must be followed subject to the following revisions:

a. All rights to be exercised and actions to be taken by a member under subsection 2 must be taken by the member and not by any assignee of the member's financial rights. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees.

b. Instead of remitting a payment under subsection 6, the limited liability company shall forward to the dissenter member:

(1) An offer to pay the fair value of the membership interests with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and

(2) A statement of that allocation.

c. If the dissenter member accepts the amount of the offer made under subdivision b but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company, and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under subdivision b and shall then be dismissed from the action.

d. If the dissenter considers the amount offered under subdivision b inadequate, the dissenter may decline the offer and demand payment under subsection 8. If the dissenter makes demand, subsections 9 and 10 apply, with the court having jurisdiction also to determine the correctness of the allocation.

e. If the member fails to take action under either subdivision c or d, then:

(1) As to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subdivision b; and

(2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subdivision b.

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization and only when authorized by the board of governors, a limited liability company may accept contributions under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.

2. A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the limited liability company.

3. No purported contribution is to be treated or considered as a contribution, unless:

a. The board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution, and states the value being accorded to the contribution; and

b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

4. The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.

5. All the membership interests of a limited liability company must:

a. Be of one class, without series, unless the articles of organization establish, or authorize the board of governors to establish, more than one class or series within classes;

b. Be ordinary membership interests entitled to vote as provided in section 10-32-45, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization have fixed the relative rights and preferences of different classes and series; and

c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.

6. Subject to any restrictions in the articles of organization, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.

7. A statement executed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;

b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;

c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

d. Convertible into membership interests of any other class or any series of the same or another class; or

e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

10-32-57. Restatement of value of previous contributions.

1. As used in this section, an "old" contribution is a contribution reflected in the required records of a limited liability company before the time the limited liability company accepts a new contribution.

2. Whenever a limited liability company accepts a new contribution, the board of governors shall restate, as required by this section, the value of all old contributions.

3. Unless otherwise provided in the articles of organization, this subsection states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:

   a. State the value the limited liability company has accorded to the new contribution under subdivision a of subsection 3 of section 10-32-56;

   b. Determine what percentage the value stated under subdivision a will constitute, after the restatement required by this subsection, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

   c. Divide the value stated under subdivision a by the percentage determined under subdivision b, yielding the total value, after the restatement required by this subsection, of all contributions pertaining to the particular series or class;

   d. Subtract the value stated under subdivision a from the value determined under subdivision c, yielding the total value, after the restatement required by this subsection, of all the old contributions pertaining to the particular series or class;

   e. Subtract the value, as reflected in the required records before the restatement required by this subsection, of the old contributions from the value determined under subdivision d, yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

   f. Allocate the value determined under subdivision e proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

   The values determined under subdivision e and allocated and added under subdivision f may be positive, negative, or zero.

4. Unless otherwise provided in the articles of organization, this subsection states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains:

   a. Determine the percentage by which the restatement under subsection 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and

   b. As to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under subdivision a. The percentage determined under subdivision a may be positive, negative, or zero.

5. If a limited liability company accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section the limited liability company may consider all those new contributions as if they were a single contribution.

10-32-58. Contribution agreements.

1. A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

2. A contribution agreement is irrevocable for a period of six months unless the contribution agreement provides for, or unless all other would-be contributors who are a party to a contribution consent to, an earlier revocation.

3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board of governors, but a call made by the board of governors for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

4. Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the board of governors may declare a forfeiture of the contribution agreement or cancel it in accordance with this subsection. If a would-be contributor does not make a required contribution of property or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.

5. Upon forfeiture of a contribution agreement, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale. Any excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale must be paid to the delinquent would-be contributor or to a legal representative. The payment must not exceed the amount of contribution actually made by the delinquent would-be contributor.

6. If, within twenty days after the limited liability company offers to sell the membership interests that were subject to the defaulted contribution agreement, no prospective purchaser offers to purchase the membership interests for a money price sufficient to pay the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale, or if the limited liability company has refunded to the would-be contributor or a legal representative a portion of the contribution agreement price actually paid, the contribution agreement may be canceled and the limited liability company may retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement price.

7. A would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

10-32-59. Contribution allowance agreements.

1. Subject to any restrictions in the articles of organization, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors.

2. Any contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all of the agreement's terms, provisions, and conditions.

3. A would-be contributor's rights under a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member at the time of the assignment, unless all of the members approve the assignment by unanimous written consent.

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization or by the board of governors under subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

10-32-61. Interim distributions. Except as provided in the articles of organization, a member is entitled to receive distributions before the limited liability company's termination only as specified in the operating agreement or by the act of the board of governors.

10-32-62. Distribution in kind. Except as provided in the articles of organization, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the articles of organization, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

10-32-63. Status as a creditor. At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all

remedies available to, a creditor of the limited liability company with respect to the distribution.

10-32-64. Limitations on distribution.

1. The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous, and the limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3. The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization or operating agreement or an agreement.

2. A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-32-66 or 10-32-86 will accrue if the requirements of this subsection have been met.

3. In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization. The provisions of chapter 13-02.1 do not apply to distributions made by a limited liability company governed by this chapter.

4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related limited liability company, or subject to any other agreement between the limited liability company and the member.

5. A distribution may be made to the owners of a class or series of membership interests only if:

   a. All amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and

   b. The payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

   A determination that the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 10-32-66 or 10-32-86 will not arise if the requirements of this subsection are met.

6. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions must be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

10-32-65. Liability of members for illegal distributions.

1. A member who receives a distribution made in violation of section 10-32-64 is liable to the limited liability company, its receiver or other person winding up its affairs, or a governor under subsection 2 of section 10-32-66, but only to the extent that the distribution received by the member exceeded the amount that properly could have been paid under section 10-32-64.

2. An action may not be commenced under this section more than two years from the date of the distribution.

10-32-66. Liability of governors for illegal distributions.

1. In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 10-32-64 or a restriction contained in the articles of organization or operating agreement or an agreement, and who fails to comply with the standard of conduct provided

in section 10-32-86, is liable to the limited liability company jointly and severally with all other governors so liable and to other governors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-32-64.

2. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-32-65.

3. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

4. An action may not be commenced under this section more than two years from the date of the distribution.

10-32-67. Organization.

1. If the first board of governors is not named in the articles of organization, the organizers may elect the first board of governors or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.

2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting an operating agreement, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.

10-32-68. Operating agreement.

1. A limited liability company may, but need not, have an operating agreement. The operating agreement may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the operating agreement only if the act expressly states that it is intended to constitute or revise the operating agreement.

2. An initial operating agreement may be adopted pursuant to section 10-32-67 by the organizers or by the first board of governors. Unless reserved by the articles of organization to the members, the power to adopt, amend, or repeal the operating agreement is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the operating agreement adopted, amended, or repealed by the board of governors. After the adoption of the initial operating agreement, the board of governors may not adopt, amend, or repeal an operating agreement provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend an operating agreement provision to increase the number of governors.

3. If members owning five percent or more of the voting power of the members entitled to vote propose a resolution for action by the members to adopt, amend, or repeal operating agreement provisions adopted, amended, or repealed by the board of governors and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization.

10-32-69. Board of governors.

1. The business and affairs of a limited liability company are to be managed by or under the direction of a board of governors, subject to the provisions of subsection 2 and section 10-32-50. The first board of governors may be named in the articles of organization or elected by the organizers pursuant to section 10-32-67 or by the members.

2. The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board of governors to take. As to an action taken by the members in that manner:

   a. The governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;

   b. The members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;

   c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board of governors, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of governors; and

   d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of governors is satisfied by a statement that the members have taken the action under this subsection.

10-32-70. Number. The board of governors consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization or the operating agreement. The number of governors may be increased or, subject to section 10-32-78, decreased at any time by amendment to or in the manner provided in the articles or operating agreement.

10-32-71. Qualifications and election. Governors must be individuals. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles or operating agreement.

10-32-72. Terms. Unless fixed terms are provided for in the articles or operating agreement, a governor serves for an indefinite term that expires at the next regular meeting of the members. A fixed term of a governor must not exceed five years. A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

10-32-73. Acts not void or voidable. The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of governors void or voidable.

10-32-74. Compensation. Subject to any limitations in the articles or operating agreement, the board of governors may fix the compensation of governors.

10-32-75. Classification of governors. Governors may be divided into classes as provided in the articles or operating agreement.

10-32-76. Cumulative voting for governors.

1. Each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:

   a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and

   b. Each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

2. No amendment to the articles or operating agreement that has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

10-32-77. Resignation. A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.

10-32-78. Removal of governors.

1. The provisions of this section apply unless modified by the articles of organization or the operating agreement.

2. A governor may be removed at any time, with or without cause, if:

   a. The governor was named by the board of governors to fill a vacancy;

   b. The members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

   c. A majority of the remaining governors present affirmatively votes to remove the governor.

3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of the proportion of the voting power of the membership interests of the classes or series the governor represents sufficient to elect them. If less than the entire board of governors is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of governors, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor. Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.

4. New governors may be elected at a meeting at which governors are removed.

10-32-79. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or operating agreement:

   a. Vacancies on the board of governors resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and

   b. Vacancies on the board of governors resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.

2. Each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.

10-32-80. Board of governors meetings.

1. Meetings of the board of governors may be held from time to time as provided in the articles of organization or operating agreement at any place within or without the state that the board of governors may select or by any means described in subsection 2. If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or operating agreement provide otherwise.

2. A board of governors meeting may be conducted by:

   a. A conference among governors using any means of communication through which the governors may simultaneously hear each other during the conference constitutes a board of governors meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of governors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting; or

   b. By any means of communication through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

3. Unless the articles of organization or operating agreement provide for a different time period, a governor may call a board meeting by giving ten days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or operating agreement require it.

4. If the day or date, time, and place of a board of governors meeting have been provided in the articles or operating agreement, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

5. A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

10-32-81. Absent governors. If the articles of organization or operating agreement so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board of governors meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a vote in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal

acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

10-32-82. Quorum. A majority, or a larger or smaller proportion or number provided in the articles of organization or operating agreement, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

10-32-83. Act of the board of governors. The board of governors shall take action by the affirmative vote of a majority of governors present at a duly held meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

10-32-84. Action without a meeting.

1. An action required or permitted to be taken at a board of governors meeting may be taken by written action signed by all of the governors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.

2. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken thereby.

10-32-85. Committees.

1. A resolution approved by the affirmative vote of a majority of the board of governors may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board of governors.

2. Committee members must be individuals. Unless the articles or operating agreement provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present.

3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.

4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 10-32-86.

6. Committee members are considered to be governors for purposes of sections 10-32-86, 10-32-87, and 10-32-99.

10-32-86. Standard of conduct.

1. A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.

2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

   a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;

   b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

   c. A committee of the board of governors upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.

3. Subsection 2 does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.

4. A governor who is present at a meeting of the board of governors when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:

   a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

b. Votes against the action at the meeting; or

c. Is prohibited by section 10-32-87 from voting on the action.

5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization. The articles may not eliminate or limit the liability of a governor:

a. For any breach of the governor's duty of loyalty to the limited liability company or its members;

b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

c. Under section 10-32-66;

d. For any transaction from which the governor derived an improper personal benefit; or

e. For any act or omission occurring before the date when the provision in the articles of organization eliminating or limiting liability becomes effective.

6. In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members including the possibility that these interests may be best served by the continued independence of the limited liability company.

10-32-87. Governor conflicts of interest.

1. A contract or other transaction between a limited liability company and one or more of its governors, or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the governor or governors or the other organizations are parties or because the governor or governors are present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if:

a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;

b. The material facts as to the contract or transaction and as to the manager's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by the holders of a majority of the membership interests, but membership interests owned

by the interested governor may not be counted in determining the presence of a quorum and may not be voted.

c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or

d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

2. For purposes of this section:

a. A governor does not have a material financial interest in a resolution fixing the compensation of the governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, even though the first governor is also receiving compensation from the limited liability company; and

b. A governor has a material financial interest in each organization in which the governor, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the governor, or any combination of them have a material financial interest.

10-32-88. Managers. The managers of a limited liability company must consist of a president, one or more vice presidents as may be prescribed in the operating agreement, a secretary, and a treasurer, each of whom must be elected by the board at such time and in such manner as may be provided in the operating agreement.

10-32-89. Duties of managers and agents. All managers and agents of the limited liability company, as between themselves and the limited liability company, have such authority and must perform such duties in the management of the limited liability company as may be provided in the operating agreement, or as may be determined by resolution of the board not inconsistent with the operating agreement.

10-32-90. Other managers. Any other managers, assistant managers, and agents, as necessary, may be elected or appointed by the board of governors or chosen in such other manner as may be provided in the operating agreement.

10-32-91. Multiple managerial positions. Any number of managerial positions or functions of those positions may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one of those positions or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board of governors, the person or persons exercising

the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

10-32-93. Contract rights. The election or appointment of a person as a manager or agent does not, of itself, create contract rights. However, a limited liability company may enter into a contract with a manager or agent. The resignation or removal of the manager or agent is without prejudice to any contractual rights or obligations.

10-32-94. Resignation, removal, and vacancy.

1. A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.

2. A manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, subject to the provisions of a member-control agreement.

3. A vacancy in an office because of death, resignation, removal, or disqualification must be filled for the unexpired portion of the term in the manner provided in the articles or operating agreement, or determined by the board of governors, or pursuant to section 10-32-92.

10-32-95. Delegation. Unless prohibited by the articles or operating agreement or by a resolution approved by the affirmative vote of a majority of the governors present, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

10-32-96. Standard of conduct. A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-32-95 is considered a manager for purposes of this section and sections 10-32-53 and 10-32-99.

10-32-97. Loans, guarantees, and suretyship.

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:

   a. Is in the usual and regular course of business of the limited liability company;

   b. Is with, or for the benefit of, a related limited liability company, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has

a business relationship, or an organization to which the limited liability company has the power to make donations;

c. Is with, or for the benefit of, a manager or other employee of the limited liability company or a subsidiary, including a manager or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

d. Has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

2. A loan, guarantee, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the limited liability company.

3. This section does not grant any authority to act as a bank or to carry on the business of banking.

10-32-98. Advances. A limited liability company may, without a vote of the governors or its members, advance money to its governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-32-99. Indemnification.

1. For purposes of this section:

a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a governor, the position of governor in a limited liability company;

(2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee, or agent of the limited liability company; and

(3) With respect to a governor, manager, employee, or agent of the limited liability company who, while a governor, manager, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, partner,

trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.

d. "Special legal counsel" means counsel who has not represented the limited liability company or a related limited liability company, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.

2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;

d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.

4. Subject to the provisions of subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

   a. Upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

   b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

   The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

5. The articles of organization or operating agreement either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 through 4 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization or the date of adoption of a provision in the operating agreement establishing the prohibition or limit on indemnification or advances.

6. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

7. All indemnification determinations must be made:

   a. By the board of governors by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

   b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more

governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;

c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

d. If a determination is not made under subdivisions a through c, by the members, excluding the votes of membership interests held by parties to the proceeding; or

e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

8. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsections 2 and 3 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.

9. A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.

10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.

11. Nothing in this section may be construed to limit the power of the limited liability company to indemnify other persons by contract or otherwise.

10-32-100. Merger - Exchange - Transfer.

1. With or without a business purpose, a limited liability company may merge:

   a. With another limited liability company or a domestic corporation pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106; and

   b. With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107.

2. A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company or domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

3. A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

4. A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 10-32-107.

5. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-32-108.

6. A limited liability company may participate in a merger only as permitted by this section.

10-32-101. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

   a. The name of the limited liability company and each other constituent organization proposing to merge or participate in an exchange, and:

      (1) In the case of a merger, the name of the surviving organization, which may be the limited liability company or the other constituent organization; or

      (2) In the case of an exchange, the name of the acquiring organization;

   b. The terms and conditions of the proposed merger;

   c. The manner and basis for converting or exchanging ownership interests:

      (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into

securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, for money or other property;

d. In the case of a merger, a statement of any amendments to the articles of organization or articles of incorporation, as the case may be, of the surviving organization proposed as part of the merger; and

e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.

2. The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

10-32-102. Plan approval.

1. A resolution containing the plan of merger must be approved by the affirmative vote of a majority of the board members present at a meeting of the governing board of each constituent organization and must then be submitted to the members of each constituent organization at a regular or a special meeting. Written notice must be given to every owner of that organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-98 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ownership interests of the organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization or articles of incorporation, as the case may be, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership

interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55, as the case may be, in the event of the merger or exchange.

4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

   a. The articles of the corporation will not be amended in the transaction;

   b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately after that date;

   c. The number of shares of the corporation entitled to vote immediately after the merger, plus the number of shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than twenty percent, the number of shares of the corporation entitled to vote immediately before the transaction; and

   d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

10-32-103. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared that contain:

   a. The plan of merger; and

   b. For each constituent organization either:

      (1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98 or the members pursuant to subsection 2 or 3 of section 10-32-102; or

      (2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98 or that a vote of the members is not required by virtue of subsection 4 of section 10-32-102.

2. The articles of merger must be signed on behalf of each constituent organization and filed with the secretary of state, together with the fees provided in section 10-32-150.

3. The secretary of state shall issue a certificate of merger to the surviving organization, or its legal representative. The certificate must contain the effective date of merger.

10-32-104. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary may merge the subsidiary into itself without a vote of the owners of either constituent organization. A resolution approved by the affirmative vote of a majority of the directors or managers of the parent present must set forth a plan of merger that contains:

   a. The name of the subsidiary and the name of the parent; and

   b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent or of another organization or, in whole or in part, into money or other property.

2. A copy of the plan of merger must be mailed to each member, other than the parent, of the subsidiary.

3. Articles of merger must be prepared that contain:

   a. The plan of merger;

   b. The number of outstanding ownership interests of each class and series of the subsidiary and the number of ownership interests of each class and series owned by the parent; and

   c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of the subsidiary.

4. Within thirty days after a copy of the plan of merger is mailed to the owners of the subsidiary, or upon waiver of the mailing by the holders of all outstanding ownership interests, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.

5. The secretary of state shall issue a certificate of merger to the parent or its legal representative. The certificate must contain the effective date of merger.

10-32-105. Abandonment of plan of merger.

1. After a plan of merger has been approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, it may be abandoned:

   a. If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote and, if the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, the governing board of that

constituent organization has approved the abandonment by the affirmative vote of a majority of the board members present;

b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

c. Pursuant to subsection 2.

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the board members present, subject to the contract rights of any other person under the plan.

3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, the constituent organizations or any one of them, in the case of abandonment under subdivision b of subsection 1, or the abandoning organization in the case of abandonment under subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:

a. The names of the constituent organizations;

b. The provision of this section under which the plan is abandoned; and

c. If the plan is abandoned under subsection 2, the text of the resolution approved by the affirmative vote of a majority of the board members present abandoning the plan.

10-32-106. Effective date of merger or exchange and effect.

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.

2. When a merger becomes effective:

a. The constituent organizations become a single entity, the surviving limited liability company or corporation, as the case may be;

b. The separate existence of all constituent organizations except the surviving organization ceases;

c. As to any limited liability company that was a constituent organization and is not the surviving organization, the articles of merger serve as the articles of termination and, unless previously filed, the notice of dissolution;

d. As to rights, privileges, immunities, powers, duties, and liabilities:

(1) If the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the

duties and liabilities of a limited liability company organized under this chapter; and

(2) If the surviving organization is a domestic corporation, the surviving domestic corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a domestic corporation;

e. The surviving organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

f. The surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations. A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization. Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and

g. The articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

3. When a merger becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 10-19.1-87 or 10-32-54, as the case may be.

10-32-107. Merger or exchange with foreign organization.

1. A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign limited liability company by following the procedures set forth in this section, if:

a. With respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized; and

b. With respect to an exchange, the organization whose ownership interests will be acquired is either a limited liability company or a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized.

2. Each limited liability company shall comply with the provisions of this section and sections 10-32-100 through 10-32-106 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

3. If the surviving organization in a merger will be a domestic limited liability company, it shall comply with all the provisions of this chapter.

4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, it shall comply, as the case may be, with the provisions of chapter 10-22 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:

a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;

b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

c. An agreement that it will promptly pay to the dissenting owners of an ownership interests of each constituent domestic limited liability company and constituent domestic corporation the amount, if any, to which they are entitled under section 10-19.1-88 or 10-32-55, as the case may be.

10-32-108. Transfer of assets - When permitted.

1. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other

instruments for the payment of money or other property, as the board of governors considers expedient, in which case no member approval is required.

2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or, if the limited liability company no longer exists, by its last managers.

4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:

   a. When the period fixed in the articles of organization for the duration of the limited liability company expires;

   b. By order of a court pursuant to sections 10-32-119 and 10-32-122;

   c. By action of the organizers pursuant to section 10-32-110;

   d. By action of the members pursuant to section 10-32-111; or

   e. Upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:

      (1) Death of any member;

      (2) Retirement of any member;

      (3) Resignation of any member;

      (4) Redemption of a member's complete membership interest;

      (5) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;

(6) A buyout of a member's membership interest under section 10-32-119 that leaves that member with no governance rights;

(7) Expulsion of any member;

(8) Bankruptcy of any member;

(9) Dissolution of any member;

(10) A merger in which the limited liability company is not the surviving organization;

(11) An exchange in which the limited liability company is not the acquiring organization; or

(12) The occurrence of any other event that terminates the continued membership of a member in the limited liability company.

However, the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if either there are at least two remaining members or a new member is admitted as provided in section 10-32-06 and the existence and business of the limited liability company is continued by the consent of all remaining members under a right to do so stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership.

2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:

a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of its limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;

b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;

c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;

d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and

e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and

terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.

10-32-110. Voluntary dissolution and termination by organizers. A limited liability company that has not accepted contributions may be dissolved and terminated by the organizers in the manner set forth in this section.

1. A majority of the organizers shall sign articles of dissolution and termination containing:

   a. The name of the limited liability company;

   b. The date of organization;

   c. A statement that contributions have not been accepted; and

   d. A statement that no debts remain unpaid.

2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.

3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.

4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:

   a. The name of the limited liability company;

   b. The date the articles of dissolution and termination were filed with the secretary of state; and

   c. A statement that the limited liability company is terminated.

10-32-111. Voluntary dissolution by members. A limited liability company may be dissolved by the members when authorized in the manner set forth in this section.

1. Written notice must be given to each member, whether or not entitled to vote at a meeting of members, within the time and in the manner provided in section 10-32-40 for notice of meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the limited liability company and that dissolution must be followed by the winding up and termination of the limited liability company.

2. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the limited liability company is dissolved.

10-32-112. Filing notice of dissolution - Effect.

1. If dissolution of the limited liability company is approved pursuant to section 10-32-111, or it occurs under subdivision a or e of subsection 1

of section 10-32-109, the limited liability company shall file with the secretary of state, together with the fees provided in section 10-32-150, a notice of dissolution. The notice must contain:

a. The name of the limited liability company; and

b. If the dissolution:

(1) Is approved pursuant to subsection 2 of section 10-32-111, the date and place of the meeting at which the dissolution was approved and a statement that the requisite vote of the members was received, or that members validly took action without a meeting; and

(2) Occurs under subdivision a of subsection 1 of section 10-32-109 by the expiration of the limited liability company's duration, a statement of the expiration date; or

(3) Occurs under subdivision e of subsection 1 of section 10-32-109 by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

2. When the notice of dissolution has been filed with the secretary of state, and subject to section 10-32-116, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 10-32-116 and the right to remove governors or fill vacancies on the board of governors. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

3. As part of winding up, the limited liability company may participate in a merger with another limited liability company or with a domestic or foreign corporation under sections 10-32-100 through 10-32-107, but the dissolved limited liability company may not be the surviving organization.

4. The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the limited liability company or any remedy against it or its governors, managers, or members in those capacities, except as provided in section 10-32-114, 10-32-115, or 10-32-128.

10-32-113. Procedure in winding up.

1. If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:

a. The procedures stated in sections 10-32-100 through 10-32-107 must be followed;

b. Sections 10-32-114 through 10-32-116 and sections 10-32-128 and 10-32-129 do not apply; and

c. Once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.

2. If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability company into a successor organization, the procedures stated in subsections 3 through 5 must be followed.

3. When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:

a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;

b. Subject to any business continuation agreement, to collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and

c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.

4. Notwithstanding section 10-32-108, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.

5. All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with section 10-32-131.

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants.

1. When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered

office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection 31 of section 10-32-02.

2. The notice to creditors and claimants must contain:

   a. A statement that the limited liability company has dissolved and is in the process of winding up its affairs;

   b. A statement that the limited liability company has filed with the secretary of state a notice of dissolution;

   c. The date of filing the notice of dissolution;

   d. The address of the office to which written claims against the limited liability company must be presented; and

   e. The date by which all claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is considered given on the date of first publication for the purpose of determining this date.

3. If the business of the limited liability company is being continued under a business continuation agreement, the notice to creditors may also contain all of the following:

   a. A statement that the business of the dissolved limited liability company is being continued by a successor organization;

   b. The name and address of the successor organization;

   c. An undertaking by the successor organization to assume all the liabilities of the dissolved limited liability company; and

   d. A statement that creditors of the dissolved limited liability company do not need to file claims against the limited liability company in order to preserve their rights to enforce those claims against the successor organization.

   Neither the existence of a business continuation agreement nor the giving of the information described in this subsection affects a creditor's or claimant's right to proceed against the dissolved limited liability company.

4. With respect to a limited liability company that gives notice:

   a. A limited liability company that gives notice to creditors and claimants has thirty days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.

b. A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has sixty days from the date of rejection, or one hundred eighty days from the date the limited liability company filed with the secretary of state the notice of dissolution, whichever is longer, to pursue any other remedies with respect to the claim.

c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 10-32-128. If the dissolved limited liability company gave the additional information referred to in subsection 3, nothing in this section bars the creditor or claimant from seeking to enforce its rights against the successor organization.

d. A creditor or claimant whose claim is rejected by the limited liability company under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

5. Articles of termination for a limited liability company that has given notice to creditors and claimants under this section must be filed with the secretary of state along with the fees provided in section 10-32-150 after:

a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

b. The longest of the periods described in subdivision b of subsection 4 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 4.

6. The articles of termination must state:

a. The last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 4 expired;

b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced

within the time provided in subdivision b of subsection 4 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

10-32-115. Winding-up procedure for limited liability companies that do not give notice to creditors and claimants.

1. Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112 and that has not given notice to creditors and claimants in the manner provided in section 10-32-114 must be filed with the secretary of state after:

   a. The payment of claims of all known creditors and claimants has been made or provided for; or

   b. At least two years have elapsed from the date of filing the notice of dissolution.

2. The articles of termination must state:

   a. If articles of termination are being filed pursuant to subdivision a of subsection 1 that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;

   b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131 or that adequate provision has been made for that distribution; and

   c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

3. If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.

4. If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-32-128.

10-32-116. Revocation of dissolution.

1. Except as provided in subsections 4 and 5, winding up proceedings commenced pursuant to section 10-32-111 may be revoked before the filing of articles of termination.

2. Written notice must be given to every member entitled to vote at a members' meeting within the time and in the manner provided in section 10-32-40 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution. The proposed revocation must be submitted to the members at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the dissolution is revoked.

3. Revocation of dissolution is effective when a notice of revocation is filed with the secretary of state together with the fees provided in section 10-32-150. After the notice is filed the limited liability company may cease to wind up and resume business.

4. If a dissolved limited liability company is being wound up and terminated by being merged into a successor organization under subsection 3 of section 10-32-112, and the plan of merger has been approved under section 10-32-102, then the dissolution may be revoked under this section only after the plan of merger has been properly abandoned under section 10-32-105.

5. When dissolution occurs under subdivision a, b, or e of subsection 1 of section 10-32-109, revocation is prohibited.

10-32-117. Effective date of termination and certificate of termination.

1. When the articles of termination have been filed with the secretary of state, the limited liability company is terminated.

2. The secretary of state shall issue to the dissolved limited liability company or its legal representative a certificate of termination that contains:

   a. The name of the limited liability company;

   b. The date the articles of termination were filed with the secretary of state; and

   c. A statement that the limited liability company is terminated.

10-32-118. Supervised voluntary winding up and termination following a voluntary dissolution. After an event of dissolution has occurred and before a certificate of termination has been issued, the limited liability company or, for good cause shown, a member or creditor may apply to a court within the county in which the registered office of the limited liability company is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 10-32-119 through 10-32-128.

10-32-119. Judicial intervention and equitable remedies, dissolution, and termination.

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

   a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;

   b. In an action by a member when it is established that:

      (1) The governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;

      (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, governors, managers, or employees of a closely held limited liability company;

      (3) The members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;

      (4) The limited liability company assets are being misapplied or wasted; or

      (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;

   c. In an action by a creditor when:

      (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

      (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or

   d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

2. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.

3. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into

consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of the members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other.

4. In determining what relief to order, the court shall take into account that any relief that results in the termination of a member's membership interest will cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.

5. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a business continuation agreement, such as any form of equitable relief, or a buyout or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

6. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

7. Proceedings under this section must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

10-32-120. Judicial intervention procedures.

1. In proceedings under section 10-32-119, the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the limited liability company assets wherever situated, and carry on the business of the limited liability company until a full hearing can be held.

2. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the limited liability company assets, including all amounts owing to the limited liability company by persons who have made contribution agreements and by persons who have made contributions by means of enforceable promises of future performance. A receiver has authority, subject to the order of the court, to continue the business of the limited liability company and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the limited liability company either at public or private sale.

3. If the court determines that the limited liability company is to be dissolved with winding up to be accomplished by liquidation, then the assets of the limited liability company or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:

   a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;

   b. Debts, taxes, and assessments due the United States, the state of North Dakota and their subsections, and other states and their subsections, in that order;

   c. Claims duly proved and allowed to employees under the provisions of title 65. However, claims under this subdivision may not be allowed if the limited liability company carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

   d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

   e. Other claims duly proved and allowed.

4. After payment of the expenses of receivership and claims of creditors duly proved under subsection 3, the remaining assets, if any, must be distributed to the members in accordance with subsection 1 of section 10-32-131.

10-32-121. Qualifications of receivers and powers.

1. A receiver must be an individual or a domestic or foreign organization authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction of the limited liability company and its property.

10-32-122. Action by attorney general.

1. A limited liability company may be involuntarily dissolved, wound up, and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:

   a. The articles of organization were procured through fraud;

   b. The limited liability company was organized for a purpose not permitted by section 10-32-04;

   c. The limited liability company failed to comply with the requirements essential to organization under this chapter;

   d. The limited liability company has failed for thirty days to appoint and maintain a registered agent in this state; or

e. The limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

2. An action must not be commenced under this section until thirty days after notice to the limited liability company by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization or the operating agreement or by performance of or abstention from the act, the attorney general shall give the limited liability company thirty additional days in which to effect the correction before filing the action.

10-32-123. Filing claims in judicial intervention proceedings.

1. In proceedings referred to in section 10-32-119, the court may require all creditors and claimants of the limited liability company to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

2. If the court requires the filing of claims, it shall fix a date not less than one hundred twenty days from the date of the order as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the limited liability company.

10-32-124. Discontinuance of proceedings for winding up through liquidation. If the court has determined that the limited liability company is to be dissolved, with winding up to be accomplished by liquidation, and subsequently the court determines that the grounds for dissolution no longer exist or that the grounds for ordering winding up through liquidation no longer exist, the court shall make whatever orders are just and reasonable under the circumstances.

10-32-125. Decree of termination.

1. If the court has ordered a dissolution, or the court has intervened under subdivision a of subsection 1 of section 10-32-119, or has ordered or caused a dissolution under any other provision of that subsection, then after the affairs of the dissolved limited liability company have been appropriately wound up the court shall enter a decree terminating the dissolved limited liability company.

2. When the decree terminating the limited liability company has been entered, the limited liability company is terminated.

10-32-126. Filing decree. After the court enters a decree terminating a limited liability company, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-32-127. Deposit with state treasurer of amount due certain members. Upon termination of a limited liability company, the portion of the assets distributable to a member who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the state treasurer for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the state treasurer and must be paid over to the member or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

10-32-128. Claims barred and exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings who does not file a claim or pursue a remedy in a legal proceeding within the time provided in sections 10-32-114, 10-32-115, 10-32-119, and 10-32-120 or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, or forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. At any time within one year after articles of termination have been filed with the secretary of state pursuant to section 10-32-114 or subdivision b of subsection 1 of section 10-32-115, or a decree of termination has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

   a. Against the limited liability company to the extent of undisposed assets; or

   b. If the undisposed assets are not sufficient to satisfy the claim against a member, the member's liability is limited to a portion of the claim that is equal to the portion of the distributions to members in liquidation or termination received by the member, but a member's liability may not exceed the amount that the member actually received in the termination.

3. All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the limited liability company's affairs must be paid or provided for by the limited liability company before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the managers and governors of the limited liability company who are responsible for, but who fail to cause, the limited liability company to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under section 10-32-66. This subsection does not apply to dissolution and termination under the supervision or order of a court.

10-32-129. Right to sue or defend after termination. After a limited liability company has been terminated, any of its former managers, governors, or

members may assert or defend, in the name of the limited liability company, any claim by or against the limited liability company.

10-32-130. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members may be transferred by a court in this state.

10-32-131. Disposition of assets upon dissolution.

1. Except when the business of a dissolved limited liability company is being continued under subsection 2 or when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:

   a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;

   b. Unless otherwise provided in the articles of organization, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and

   c. Unless otherwise provided in the articles of organization, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting their membership interests in the proportions in which the members share in distributions.

   A limited liability company may offset any amount due a member under this subsection by any amount owed to the limited liability company by the member and by the amount of damages, if any, suffered by the limited liability company as a result of that member's breach of a member-control agreement.

2. If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company must be disposed of according to that agreement, except:

   a. Members and former members have dissenters' rights as provided in sections 10-32-54 and 10-32-55, but:

      (1) No dissenters' rights exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution; and

      (2) Any dissenters' rights that do exist are limited by subsection 3.

   b. If the business of the dissolved limited liability company is being continued, but not through a merger under subsection 3 of section 10-32-112, the dissolved limited liability company shall comply with either section 10-32-114 or 10-32-115.

3. If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subsection 2:

a. Those rights must be honored; but

b. Unless the business continuation agreement provides otherwise:

(1) In determining the fair value of the membership interest, the value of the goodwill of the business of the dissolved limited liability company must not be considered; and

(2) The payment due the dissenter is subject to an offset equal to:

(a) Any amount owed to the limited liability company by the member;

(b) The amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and

(c) The amount of damages, if any, suffered by the limited liability company as a result of any breach by the dissenter of any other member-control agreement or part of a member-control agreement.

10-32-132. Service of process on limited liability company and nonresident governors.

1. The registered agent must be an agent of the limited liability company and any nonresident governor upon whom any process, notice, or demand required or permitted by law to be served on the limited liability company or governor may be served. Acceptance of a governorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served upon a limited liability company may be served either:

a. Upon the registered agent of the limited liability company;

b. Upon a manager of the limited liability company; or

c. Upon the secretary of state as provided in this section.

3. If neither the limited liability company's registered agent nor an officer of the limited liability company can be found at the registered office, or if a limited liability company fails to maintain a registered agent in this state and a manager of the limited liability company cannot be found at the registered office, then the secretary of state is the agent of the limited liability company upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person not a party, that no registered agent or manager can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the limited liability company and is made by filing with the

secretary of state an original and two copies of the process, notice, or demand, along with the fees provided for in section 10-32-150. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

4. A record must be maintained in the office of the secretary of state of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it.

5. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner permitted by law.

10-32-133. When a member is not a proper party. A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company except when:

1. The object of the proceeding is to determine or enforce a member's right against, or liability to, the limited liability company; or

2. The proceeding involves a claim of personal liability or responsibility of that member and that claim has some basis other than the member's status as a member.

10-32-134. State interested in proceedings. If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-32-135. Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

2. A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

10-32-136. Name. A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic

limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization.

10-32-137. Admission of foreign limited liability company - Transacting business and obtaining licenses and permits. No foreign limited liability company may transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state. No foreign limited liability company may transact in this state any business that is prohibited to a domestic limited liability company organized under this chapter. A foreign limited liability company may not be denied a certificate of authority because the laws of the state or country where the limited liability company is organized differ from the laws of this state. Nothing in this chapter authorizes this state to regulate the organization or internal affairs of a foreign limited liability company.

10-32-138. Application for certificate of authority.

1. An applicant for the certificate shall file with the secretary of state an application executed by an authorized person and setting forth:

   a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

   b. The jurisdiction of its organization;

   c. The name and business address of the proposed registered agent in this state, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state; and

   d. The address of the principal executive office of the foreign limited liability company.

2. The application must be accompanied by payment of the fees provided in section 10-32-150 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the limited liability company is organized and the consent of the designated registered agent for service of process to serve in that capacity.

10-32-139. Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;

2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent; and

3. Issue to the limited liability company or its representative, a certificate of authority to transact business in this state.

10-32-140. Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, including but not limited

to a change in the name or address of the registered agent required to be maintained by section 10-32-141, the foreign limited liability company shall promptly file with the secretary of state an amendment to the certificate of authority, executed by an authorized person correcting the statement.

10-32-141. Registered agent and certain reports. A foreign limited liability company authorized to transact business in this state shall:

1. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-32-12; or

2. File a report upon any change in the name or business address of its registered agent in the same manner as provided in subsection 3 of section 10-32-13.

10-32-142. Merger of foreign limited liability company authorized to transact business in this state. Whenever a foreign limited liability company authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the limited liability company is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. It is not necessary for any foreign organization, which is the surviving organization in a merger, to procure either a new or amended certificate of authority to transact business in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state.

10-32-143. Certificate of withdrawal. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:

1. The name of the limited liability company and the state or country under the laws of which it is organized;

2. That the limited liability company is not transacting business in this state;

3. That the limited liability company surrenders its authority to transact business in this state;

4. That the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state; and

5. A post-office address to which a person may mail a copy of any process against the limited liability company.

10-32-144. Revocation of certificate of authority.

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:

   a. The foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or

   b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign limited liability company pursuant to this chapter.

2. No certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:

   a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office required to be maintained pursuant to section 10-32-12; and

   b. During the sixty-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the principal executive office of the foreign limited liability company.

10-32-145. Transaction of business without certificate of authority.

1. A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

2. The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

3. A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

4. A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have

been imposed by this chapter upon that limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

5. A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each governor or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

7. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

10-32-146. Transactions not constituting transacting business.

1. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:

   a. Maintaining, defending, or settling any proceeding;

   b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;

   c. Maintaining bank accounts;

   d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;

   e. Selling through independent contractors;

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired;

j. Selling or transferring title to property in this state to any person; or

k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.

3. For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.

4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

10-32-147. Action by attorney general. The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

10-32-148. Service of process. Service of process on a foreign limited liability company must be as provided in section 10-32-132.

10-32-149. Annual report of limited liability company and foreign limited liability company.

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:

a. The name of the limited liability company and the state or country under the laws of which it is organized.

b. The address of the registered office of the limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.

c. A brief statement of the character of the business in which the limited liability company is actually engaged in this state.

d. The names and respective addresses of the managers and governors of the limited liability company.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection 45 of section 10-32-02, or if the limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the limited liability company by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. The annual report of a limited liability company or foreign limited liability company must be received by the secretary of state on or before November fifteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be received on or before November fifteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state. The secretary of state must file the report if the report conforms to the requirements of subsection 2. If the report does not conform, it must be returned to the limited liability company for any necessary corrections. If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply, if a report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is received on or before November fifteenth.

4. Each limited liability company or foreign limited liability company that fails or refuses to file its annual report for any year within the time prescribed by subsection 3 must pay an additional fee of fifty dollars. A limited liability company that fails to file its annual report, along with the statutory filing and penalty fees, within six months after November fifteenth, ceases to exist and is considered involuntarily terminated by operation of law. The secretary of state shall revoke the certificate of authority to transact business of any foreign limited liability company which fails to file its annual report, along with the statutory filing and penalty fees within six months after November fifteenth. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

5. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 4. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee as prescribed by section 10-32-150 and the late filing penalty fee as

prescribed by subsection 4, the secretary of state will restore its certificate of organization or certificate of authority to good standing.

6. A limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law. The secretary of state shall note the termination of the limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the terminated limited liability company. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.

7. A foreign limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits its authority to transact business in North Dakota. The secretary of state shall note the revocation of the foreign limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability company. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office of record.

8. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a one hundred twenty-five dollar fee. The fees must be paid and the report filed within one year following November fifteenth for the past-due report. Reinstatement under this section does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

10-32-150. Fees and charges.

1. The secretary of state shall charge and collect for:

   a. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.

   b. Filing articles of amendment, fifty dollars.

   c. Filing restated articles of organization, one hundred twenty-five dollars.

   d. Filing articles of merger and issuing a certificate of merger, fifty dollars.

   e. Filing abandonment of merger or exchange, fifty dollars.

   f. Filing an application to reserve a name, ten dollars.

   g. Filing a notice of transfer of a reserved name, ten dollars.

   h. Filing a cancellation of reserved name, ten dollars.

i. Filing a consent to use of name, ten dollars.

j. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.

k. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability company affected by such change.

l. Filing a registered agent's consent to serve in such capacity, ten dollars.

m. Filing a resignation as registered agent, ten dollars.

n. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.

o. Filing a notice of dissolution, ten dollars.

p. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

q. Filing articles of dissolution and termination, twenty dollars.

r. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred twenty-five dollars.

s. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.

t. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, twenty dollars.

u. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.

v. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars; any other statement or report of either, ten dollars.

w. Filing any process, notice, or demand for service, twenty dollars.

2. The secretary of state shall charge and collect for:

a. Furnishing a copy of any document, instrument, or paper relating to a limited liability company or a foreign limited liability company, one dollar for every four pages, or fraction thereof.

b. A certificate certifying a copy or reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.

c. Each page of any document or form sent by electronic transmission, one dollar.

10-32-151. Audit reports and audit of limited liability companies receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability company that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability company, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the limited liability company's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability company required to submit an annual report under this section.

10-32-152. Powers - Enforcement - Appeal.

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.

2. The secretary of state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.

   a. Such interrogatories must be answered within thirty days after mailing, or within such additional time as must be fixed by the secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.

   b. If such interrogatories be directed:

      (1) To an individual, they must be answered by that individual; or

      (2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.

   c. The secretary of state need not file any document to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such document is not in conformity with the provisions of this chapter.

   d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.

   e. Each manager or governor of a limited liability company, domestic or foreign, who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.

f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from such interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall, within ten days after receipt of the document, give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.

a. From such rejection such person may appeal to the district court of the county in which the registered office of such limited liability company is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state.

b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

4. If the secretary of state revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32-144, such foreign limited liability company may appeal to district court of the county where the registered office of such limited liability company in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

5. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

10-32-153. Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.

10-32-154. Forms to be furnished by the secretary of state. All reports required by this chapter to be filed in the office of the secretary of state must be made on forms which must be prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state must be furnished by the secretary of state upon request. However, the use of such documents, unless otherwise specifically required by law, is not mandatory.

10-32-155. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:

   a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.

   b. "Private organization" means a limited liability company authorized under this chapter or corporation authorized under chapter 10-19.1, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

   c. "Public corporation" means:

      (1) This state;

      (2) Any political subdivision of this state;

      (3) Any municipality of this state;

      (4) Any public agency:

         (a) Of this state;

         (b) Of any political subdivision of this state; or

         (c) Any municipality of this state; or

      (5) Any other corporate instrumentality of this state.

2. Any private organization or public organization has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

SECTION 9. AMENDMENT. Section 40-57.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **40-57.1-02. Definitions.** As used in this chapter, unless a different meaning clearly appears from the context:

1. "Local development ~~corporation~~ organization", as used in section 40-57.1-04.3, means a profit or nonprofit corporation incorporated under the laws of this state or a limited liability company organized under the laws of this state, formed for the purpose of furthering the economic development of its community and environs, with authority to promote and assist the growth and development of business concerns in the areas covered by its operations. The operations of the corporation or limited liability company must be limited to a specified area in this state. The controlling interest in the corporation or limited liability company must be held by at least twenty-five persons residing or doing business in the community or its environs. These persons must control not less than seventy-five percent of the voting control of the corporation or limited liability company. No shareholder or member of the corporation or limited liability company may own in excess of twenty-five percent of the voting control in the corporation or limited liability company if that shareholder or member has a direct pecuniary interest in any project or business concern which will occupy the property of the corporation or limited liability company. The primary objective of the corporation or limited liability company must be to benefit the community through increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders or members. Any monetary profits or other benefits going to the shareholders or members must be merely incidental to the primary objective of the corporation or limited liability company.

2. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01.

3. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth.

4. "Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises. For the purpose of the income tax exemption, "project" means both "primary sector business" and "tourism" as defined by this section.

5. "Tourism" means all tourism-related businesses and activities including recreation, historical and cultural events, guide services, and unique lodging and food services which serve as destination attractions.

SECTION 10. AMENDMENT. Section 40-57.1-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[3] NOTE: Section 40-57.1-02 was also amended by section 1 of House Bill No. 1510, chapter 407.

[4] **40-57.1-04.3. Property tax exemption on speculative industrial buildings and properties owned by a local development ~~corporation~~** organization. A municipality may, in its discretion, grant partial or complete exemption from ad valorem taxation on buildings, structures, and improvements constructed and owned by a local development ~~corporation~~ organization for the express purpose of attracting new industry to this state. This exemption from ad valorem taxation is only available on new buildings, structures, and improvements while they remain unoccupied. Once the building, structure, or improvement is occupied, the exemption continues until the next annual assessment date following the first occupancy. This section does not affect the eligibility for property tax exemption of a business available under other provisions of this chapter, provided application for the tax exemption is made prior to occupancy. A written request for the exemption is to be filed by the local development ~~corporation~~ organization with the municipality. The request will be reviewed at an official meeting of the governing body and will be placed on the agenda for final action at the next official meeting. The governing body of the municipality shall notify the county director of tax equalization with respect to any exemption granted under this section.

SECTION 11. AMENDMENT. Section 40-57.2-01 of the North Dakota Century Code is amended and reenacted as follows:

40-57.2-01. Cities and counties may enter into agreements for surveys for industrial development and vocational and on-the-job training. The governing body of any city or county of this state is authorized in accordance with the provisions of this chapter to enter into contracts with any person, firm, association, ~~or~~ corporation, or limited liability company for the purpose of obtaining site surveys and site development plans, structural and mechanical plans and surveys, market surveys, and similar plans and surveys relating to industrial development and plant location, design, construction, equipment, and operation. Similar contracts may be entered into by such political subdivisions in accordance with the provisions of this chapter for the providing of vocational and on-the-job training for residents of this state in industries located within this state. Such agreements shall be entered into only with a financially and educationally reliable person, firm, association, ~~or~~ corporation, or limited liability company that has been approved for such agreement by a local development ~~corporation~~ organization located in such city or county and organized to encourage industrial and commercial development and growth.

SECTION 12. AMENDMENT. Section 40-57.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.3-03. Budget - Contracts - Bonds - Capital construction. The governing body of the city shall annually set the budget, if any, under which the committee shall operate. The governing body of the city may contract with any person, firm, association, ~~or~~ corporation, or limited liability company to carry out the purposes of the city visitors' promotion fund or the city visitors' promotion capital construction fund created under section 40-57.3-02. The governing body of the city may irrevocably dedicate any portion of revenues from the tax authorized under section 40-57.3-01.1 and may authorize and issue bonds or other evidences of

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[4] NOTE: Section 40-57.1-04.3 was also amended by section 1 of Senate Bill No. 2191, chapter 408.

indebtedness in the manner prescribed by section 40-35-08 to be paid by those revenues for any purpose that moneys in the city visitors' promotion capital construction fund may be used; and such tax upon being pledged to payment of bonds or evidences of indebtedness issued pursuant to this section may not be reduced or repealed by the governing body or by the electors of the municipality by any initiated amendment to or referendum of the ordinance referred to in section 40-57.3-01.1, so long as any of such bonds or evidences of indebtedness remain outstanding. The proceeds from the tax imposed under section 40-57.3-01 may not be used for any type of capital construction or purchase of real property. The proceeds from the tax imposed under section 40-57.3-01.1 may be used only for payment of bonds issued, and the costs of issuance related thereto, under this section or capital construction, maintenance, and repair or acquisition of property consistent with the purposes of this chapter.

SECTION 13. AMENDMENT. Subsection 5 of section 57-38-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Person" includes individuals, fiduciaries, partnerships, ~~and~~ corporations, and limited liability companies.

SECTION 14. AMENDMENT. Subdivision q of subsection 1 of section 57-38-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

q. Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in either a venture capital corporation organized pursuant to chapter 10-30.1 or in the Myron G. Nelson Fund, Incorporated, or a separate legal entity such as a limited partnership or limited liability company created by the Myron G. Nelson Fund, Incorporated, as an affiliate, which entities are organized pursuant to chapter 10-30.2. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1 or 10-30.2. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.

SECTION 15. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Taxation of limited liability companies. For purposes of this chapter, a limited liability company that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

SECTION 16. AMENDMENT. Subsection 3 of section 57-38-30.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In the case of a corporation which is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the corporation's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the corporation's taxable income which is allocable or apportionable to the corporation's interest in the trade, business, or entity.

SECTION 17. AMENDMENT. Subsection 3 of section 57-38-45 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any person including any officer or employee of any corporation or any member or employee of any partnership or any member, employee, governor, or manager of a limited liability company who, with intent to evade any requirement of this chapter, shall fail to pay any tax, or to make, sign, or verify any return, or to supply any information required by law, or under the provisions of this chapter, or who with like intent shall make, render, sign, or verify any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction. Such person shall also be guilty of a class A misdemeanor.

SECTION 18. Section 57-38-60.2 of the North Dakota Century Code is created and enacted as follows:

57-38-60.2. Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the governor or manager, jointly or severally, charged with the responsibility of the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 19. AMENDMENT. Subsection 3 of section 57-38-67 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Landowner" means any individual, partnership, limited liability company, trust, or estate owning land in North Dakota, except that any individual, partnership, limited liability company, trust, or estate that acquires such land for the purpose of obtaining the income tax deduction provided for in sections 57-38-67 through 57-38-70 are not deemed to be a landowner.

SECTION 20. A new section to chapter 57-38.1 of the North Dakota Century Code is created and enacted as follows:

Taxation of limited liability companies. For purposes of this chapter, a limited liability company that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

Approved April 12, 1993
Filed April 12, 1993

COUNTIES

CHAPTER 93

SENATE BILL NO. 2475
(Senators Redlin, Lindgren)

COUNTY OFFICER RESIDENCY

AN ACT to amend and reenact section 11-10-04 of the North Dakota Century Code, relating to residency requirements of county officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-04 of the North Dakota Century Code is amended and reenacted as follows:

11-10-04. Officer must be qualified elector - Exceptions. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which ~~he~~ the person is chosen or appointed, and a county commissioner must be a qualified elector in the district from which ~~he~~ the commissioner is chosen. Upon approval of the board of county commissioners of each affected county, a person may serve as an elected officer of more than one county and must be a qualified elector of one of the counties in which the person is elected. Two or more counties may appoint one person to fill the same office in each county and the person filling the office must be a qualified elector of one of the counties.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 94

HOUSE BILL NO. 1426
(Representatives Skarphol, Rennerfeldt, Jacobs, C. Carlson)
(Senators Andrist, Bowman)

COUNTY SUPERINTENDENT OF SCHOOLS EMPLOYMENT

AN ACT to amend and reenact section 11-10-10.5 of the North Dakota Century Code, relating to the employment of a county superintendent of schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-10.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-10.5. County superintendent of schools - Officer. For purposes of sections 11-10-10, 11-10-15, and 11-10-20, the county superintendent of schools employed by the board of county commissioners is an officer of the county. Notwithstanding any other provision of law except section 15-22-01, a board of county commissioners may by majority vote employ a person who meets the qualifications provided in section 15-22-02 to serve as the county superintendent of schools on a part-time basis.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 95

SENATE BILL NO. 2271
(Senators Marks, Jerome, O'Connell)
(Representatives Gulleson, Hagle, Soukup)

POLITICAL SUBDIVISION ENACTMENTS PRESUMPTION

AN ACT to create and enact a new section to chapter 11-10, a new section to chapter 40-11, and a new section to chapter 58-01 of the North Dakota Century Code, relating to a conclusive presumption of regularity for county, city, and township resolutions, ordinances, bylaws, and regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Presumption of regular adoption, enactment, or amendment of resolution or ordinance. Three years after adoption or amendment of a resolution or the enactment or amendment of an ordinance by the board of county commissioners it is conclusively presumed that the resolution or ordinance was adopted, enacted, or amended and published as required by law.

SECTION 2. A new section to chapter 40-11 of the North Dakota Century Code is created and enacted as follows:

Presumption of regular adoption, enactment, or amendment of resolution or ordinance. Three years after the adoption or amendment of a resolution or the enactment or amendment of an ordinance by the governing body of a city it is conclusively presumed that the resolution or ordinance was adopted, enacted, or amended and published as required by law.

SECTION 3. A new section to chapter 58-01 of the North Dakota Century Code is created and enacted as follows:

Presumption of regular enactment, adoption, or amendment of bylaws, resolutions, or regulations. Three years after enactment or amendment of township bylaws or adoption or amendment of township resolutions or regulations it is conclusively presumed that the bylaws, resolutions, or regulations were enacted, adopted, or amended as required by law.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 96

HOUSE BILL NO. 1094
(Political Subdivisions Committee)
(At the request of the State Historical Society)

COUNTY PARTICIPATION IN HISTORIC PRESERVATION

AN ACT to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to the power of boards of county commissioners to initiate participation in the national historic preservation program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-11-14 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To participate and enact or adopt ordinances and resolutions necessary for participation in the nation's historic preservation program as a certified local government, as provided for under 36 CFR 61.5.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 97

SENATE BILL NO. 2399
(Senators Dotzenrod, Andrist, Kinnoin)
(Representatives Belter, Grumbo)

JOB DEVELOPMENT AUTHORITY VOTERS

AN ACT to amend and reenact section 11-11.1-01 of the North Dakota Century Code, relating to the election question to discontinue a job development authority and to the job development authority board of directors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-11.1-01. Job development authority - Board of directors' members qualifications. The board of county commissioners, by resolution, may create a job development authority for the county, or may discontinue a job development authority which has been created for the county. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition signed by electors of the county who are residents of the area subject to taxation under section 11-11.1-04 equal in number to ten percent of the votes cast in the county in the area subject to taxation under section 11-11.1-04 for the office of governor in the last general election. Only electors of the county who are residents of the area subject to taxation under section 11-11.1-04 may vote on the question to discontinue the authority. The question to discontinue the authority requires a majority of the electors voting on the question for passage. If the authority is created, a board of directors of not fewer than ten nor more than twenty members shall be appointed by the county commissioners and shall consist of representatives from the following groups, as they may exist:

1. Two members from the county commission.

2. One member from the city council or commission of each city within the county which has a population of five hundred or more.

3. One member selected from among the city governments of the remaining cities of the county.

4. If a majority of the townships in the county are organized townships, two members selected from the township governments of the organized townships in the county.

5. The remaining members shall be selected from a list of candidates from the following fields:

   a. A representative of the local job service office nearest the county seat.

   b. A member of the local airport authority.

c. A member of a local institution of higher education.

d. A member from among the school boards of the county.

e. A member from a local industrial development organization.

f. A member of the regional planning council serving the county.

g. A member of the legislative assembly representing a district within the county.

h. Members at large from the county.

The county commissioners shall make these appointments from a slate of candidates submitted by the chambers of commerce within the county. If no chamber of commerce exists in the county, the nominations may be submitted by any civic or patriotic organization within the county. If names submitted are unacceptable, the county commission may request additional nominees. The members shall be appointed without regard to political affiliation and upon their fitness to serve as members by reason of character, experience, and training. All members of the board who do not reside in the area subject to taxation under section 11-11.1-04 are nonvoting members of the board.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 98

HOUSE BILL NO. 1483
(Representatives Mahoney, Gates, Freier)
(Senator Nething)

JOINT JOB DEVELOPMENT AUTHORITIES

AN ACT to create and enact section 11-11.1-01.1 and a new section to chapter 57-15 of the North Dakota Century Code, relating to a joint job development authority for counties and the establishment of economic growth districts; and to amend and reenact sections 11-11.1-02, 11-11.1-03, 11-11.1-04, 11-11.1-06, and 57-15-31 of the North Dakota Century Code, relating to a joint job development authority for counties and county general fund levies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 11-11.1-01.1 of the North Dakota Century Code is created and enacted as follows:

11-11.1-01.1. Joint job development authority - Board of directors. The boards of county commissioners of two or more counties, by resolution, may create a joint job development authority for the counties. If the authority is created, boards of county commissioners shall appoint a board of directors in the size and manner established in the resolution. The resolution must include provision for discontinuing the authority by the boards of county commissioners. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition signed by electors, who are residents of the area subject to taxation under section 11-11.1-04, of any county creating the authority equal in number to ten percent of the votes cast in that county for the office of governor in the last general election. The question to discontinue the authority requires a majority of the electors voting on the question in that county for passage. Only electors of the county who are residents of the area subject to taxation under section 11-11.1-04 may vote on the question to discontinue the authority. If the question to discontinue in any county creating the authority is passed, the authority is discontinued.

SECTION 2. AMENDMENT. Section 11-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11-11.1-02. Members of the job development authority board of directors - Term of office - Oath - Expenses. The members of the job development authority board of directors and the joint job development authority board of directors shall serve for a term of three years or until their successors are duly qualified. Terms of office ~~shall~~ begin on January first and ~~shall~~ must be arranged so that the terms of office of approximately one-third of the members ~~shall~~ expire on December thirty-first of each year. Each member of the board shall qualify by taking the oath provided for civil officers. The oath ~~shall~~ must be filed with the county auditor.

The board of directors shall annually elect members to serve as chairman, vice chairman, secretary, and treasurer. ~~They~~ The board shall also select an executive

committee with such powers and duties as may be delegated by the board ~~of directors~~. Members may be reimbursed from funds available to the authority for mileage and expenses as provided in sections 44-08-04 and 54-06-09 but ~~shall~~ may not receive ~~no~~ compensation for service.

SECTION 3. AMENDMENT. Section 11-11.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **11-11.1-03. Powers and duties of job development authorities.** The job development authority or joint job development authority shall use its financial and other resources to encourage and assist in the development of employment within the county or counties. In fulfilling this objective, the ~~job development~~ authority may exercise the following powers:

1. To sue and be sued.
2. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
3. To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the county or counties.
4. To make, amend, and repeal resolutions consistent with the provisions of this chapter as necessary to carry into effect the powers and purposes of the authority.
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of ~~real or personal~~ property.
6. To certify a tax levy as provided in section 11-11.1-04 and to expend moneys raised by the tax for the purposes provided in this chapter.
7. To insure or provide for insurance of any ~~real or personal~~ property in which the authority has an insurable interest.
8. To invest any funds held by the authority.
9. To cooperate with political subdivisions in exercising any of the powers granted by this section, including enabling agreements permitted under chapter 54-40.
10. To loan, grant, or convey any funds or other ~~real or personal~~ property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.
11. To exercise any other powers necessary to carry out the purposes and provisions of this chapter.

SECTION 4. AMENDMENT. Section 11-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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[1] NOTE: Section 11-11.1-03 was also amended by section 13 of Senate Bill No. 2021, chapter 42, and by section 1 of Senate Bill No. 2537, chapter 99.

[2] **11-11.1-04. Tax levy for job development authorities.** The board of county commissioners of a county which has a job development authority or joint job development authority shall establish a job development authority fund and levy a tax not exceeding the limitation in subsection 29 of section 57-15-06.7. The county treasurer shall keep the fund separate from other money of the county and transmit all funds received pursuant to this section within thirty days to the board of directors of the ~~job development~~ authority. The funds when paid to the ~~job development~~ authority ~~shall~~ must be deposited in a special account in which other revenues of the ~~job development~~ authority are deposited and may be expended by the ~~job development~~ authority as provided in sections 11-11.1-02 and 11-11.1-03.

SECTION 5. AMENDMENT. Section 11-11.1-06 of the North Dakota Century Code is amended and reenacted as follows:

11-11.1-06. Alternative levy for industrial development organizations. In lieu of establishing a job development authority or joint job development authority as provided in sections 11-11.1-01 through 11-11.1-05, the board of county commissioners in a county where an active industrial development organization exists may levy a tax not exceeding the limitation in subsection 29 of section 57-15-06.7. The funds from the levy may be used to enter into a contract with the industrial development organization for performance of the functions of a job development authority or joint job development authority as provided in sections 11-11.1-01 through 11-11.1-05.

SECTION 6. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Economic growth districts. In counties that are part of a joint job development authority, an economic growth district may be established by resolution approved by the board of county commissioners of each county that will be part of the economic growth district. The resolution approved by each board of county commissioners must specify which of the counties in the economic growth district will have the responsibility to administer the economic growth increment pool, unless the boards of county commissioners otherwise agree in writing to different terms and conditions.

1. Upon establishment of an economic growth district, the auditor of each county in the economic growth district shall compute and certify the taxable value of each lot or parcel of commercial property, as defined in section 57-02-01, in that county as most recently assessed and equalized. In each subsequent year, the county auditor of each county in an economic growth district shall compute and certify the amount by which the taxable valuation of all commercial lots and parcels of real property in that county, as most recently assessed and equalized, has increased in comparison with the original taxable value of all commercial lots and parcels. The amount of increase determined is the gross commercial growth of that county. If there is a decrease or no increase in gross commercial growth, the auditor shall certify the gross commercial growth as zero.

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[2] NOTE: Section 11-11.1-04 was also amended by section 2 of Senate Bill No. 2537, chapter 99.

The auditor shall compute and certify the net commercial growth of the county as thirty percent of the gross commercial growth.

2. The county auditor of each county in an economic growth district shall exclude the net commercial growth determined under subsection 1 from the taxable valuation upon which the auditor computes the mill rates of taxes levied in that year by the state and every political subdivision having power to levy taxes on the property. The auditor shall extend the aggregate mill rate against the net commercial growth as well as the taxable valuation upon which the aggregate mill rate was determined. The amount of taxes received from application of the aggregate mill rate against the net commercial growth is the economic growth increment revenue for that year.

3. The county auditor of each county in an economic growth district shall segregate all economic growth increment revenue in a special fund.

4. The county treasurer shall remit the economic growth increment revenue to the county auditor of the county that administers the economic growth increment pool when the county treasurer distributes collected taxes to the state and to political subdivisions.

5. Before annual certification of county tax levies to the county auditor, the county auditor in the county that administers the economic growth increment pool shall distribute to the county auditors of the other counties in the economic growth district the proportion of the economic growth increment pool which the population of the receiving county bears to the total population of all counties in the economic growth district. Revenue received by a county under this subsection must be deposited in the county general fund.

6. An economic growth district may be dissolved by discontinuation of a joint job development authority or by approval of a resolution by the board of county commissioners of each county in the economic growth district. Upon dissolution of an economic growth district, any funds remaining in the economic growth increment pool must be distributed in accordance with subsection 5.

SECTION 7. AMENDMENT. Section 57-15-31 of the North Dakota Century Code is amended and reenacted as follows:

57-15-31. Determination of levy. The amount to be levied by any county, city, township, school district, park district, or other municipality authorized to levy taxes shall be computed by deducting from the amount of estimated expenditures for the current fiscal year as finally determined, plus the required reserve fund determined upon by the governing board from the past experience of the taxing district, the total of the following items:

1. The available surplus consisting of the free and unencumbered cash balance.

2. Estimated revenues from sources other than direct property taxes.

3. The total estimated collections from tax levies for previous years.

4. Such expenditures as are to be made from bond sources.

5. The amount of distributions received from an economic growth increment pool under section 6 of this Act.

Allowance may be made for a permanent delinquency or loss in tax collection not to exceed five percent of the amount of the levy.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 99

SENATE BILL NO. 2537
(Senator Keller)
(Approved by the Delayed Bills Committee)

JOB DEVELOPMENT AUTHORITY REVENUES

AN ACT to amend and reenact subsection 6 of section 11-11.1-03 and sections 11-11.1-04 and 11-11.1-07 of the North Dakota Century Code, relating to authority of job development authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 6 of section 11-11.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. To certify a tax levy as provided in section 11-11.1-04 and to expend moneys raised by the tax for the purposes provided in this chapter. A job development authority may accept and expend moneys from any other source.

SECTION 2. AMENDMENT. Section 11-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

[2] **11-11.1-04. Tax levy for job development authorities.** The board of county commissioners of a county which has a job development authority shall establish a job development authority fund and levy a tax not exceeding the limitation in subsection 29 of section 57-15-06.7. The county treasurer shall keep the fund separate from other money of the county and transmit all funds received pursuant to this section within thirty days to the board of directors of the job development authority. The funds when paid to the job development authority ~~shall~~ must be deposited in a special account in which other revenues of the job development authority are deposited ~~and~~. Moneys received by the job development authority from any other source must also be deposited in the special account. The moneys in the special account may be expended by the job development authority as provided in sections 11-11.1-02 and 11-11.1-03.

SECTION 3. AMENDMENT. Section 11-11.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[1] NOTE: Section 11-11.1-03 was also amended by section 3 of House Bill No. 1483, chapter 98 and by section 13 of Senate Bill No. 2021, chapter 42.

[2] NOTE: Section 11-11.1-04 was also amended by section 4 of House Bill No. 1483, chapter 98.

11-11.1-07. Dedication of tax revenues. The governing body of a county may dedicate any portion of revenues from the tax authorized under this chapter or moneys received from any other source to payment of any loan entered or grant awarded for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 100

SENATE BILL NO. 2533
(Senators Krauter, Graba)
(Representatives Jacobs, Kerzman, Martin)

DEED RECORDING WITH UNPAID TAXES

AN ACT to amend and reenact sections 11-13-12 and 11-18-02 of the North Dakota Century Code, relating to prohibiting the recording of deeds transferring property on which taxes are unpaid but not delinquent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-13-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-13-12. Auditor's certificate of taxes on deeds, contracts for deed, plats, replats, and patents.

1. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are delinquent taxes or special assessments against the land described in the instrument or whether the land has been sold for taxes.

   a. If there are delinquent taxes or special assessments ~~or installments of special assessments~~ against lands described in the instrument, the auditor shall certify the same. When the receipt of the county treasurer is produced for the delinquent and current taxes or special assessments ~~or installments of special assessments~~, the ~~county~~ auditor shall enter ~~on the instrument over the auditor's official signature~~: ~~"Delinquent taxes~~ "Taxes and special assessments ~~or installments of special assessments~~ paid and transfer entered".

   b. If the land described has been sold for taxes to a purchaser other than the county, the auditor shall enter "Taxes paid by sale of the land described within and transfer entered".

   c. If the instrument presented is entitled to record without regard to taxes, the auditor shall enter "Transfer entered".

   d. Entries required under this subsection must be accompanied by the auditor's signature.

2. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office whether there are current taxes or current special assessments against the land described in the instrument. If there are current taxes or current special assessments ~~or installments of special assessments~~ against the land described in the instrument, the auditor shall place a statement on the instrument showing the amount of

any current taxes or current special assessments ~~or installments of special assessments~~. When the receipt of the county treasurer is produced showing payment of delinquent and current taxes and special assessments, the auditor shall enter "Taxes and special assessments paid and transfer entered". For purposes of this subsection:

a. "Current special assessments" means special assessments that have been certified to the county auditor for collection but are not yet delinquent.

b. "Current taxes" means real estate taxes, as shown on the most recent tax list prepared by the county auditor, which are not yet delinquent.

3. Whenever a plat, replat, auditor's lot, or any instrument that changes the current property description, including condominium ownership established under chapter 47-04.1, is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer whether there are current or delinquent taxes, special assessments and, after February first of each year, the tax estimate for that year against the land described in the instrument or whether the land has been sold for taxes. If there are current taxes, delinquent taxes, delinquent special assessments, installments of special assessments, or tax estimates against lands described in the instrument, the auditor shall certify the same.

SECTION 2. AMENDMENT. Section 11-18-02 of the North Dakota Century Code is amended and reenacted as follows:

11-18-02. Register of deeds not to record certain instruments unless they bear auditor's certificate of transfer. Except as otherwise provided in section 11-18-03, the register of deeds shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent and current taxes and delinquent and current special assessments ~~or installments of special assessments~~ against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments ~~or installments of special assessments~~ have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 101

SENATE BILL NO. 2413
(Senators W. Stenehjem, Holmberg)
(Representatives Allmaras, Timm)

TAX LIEN SUSPENSION FOR STATE LANDS

AN ACT to amend and reenact sections 11-13-14, 57-29-01, and 57-29-02 of the North Dakota Century Code, relating to the county auditor's certificates on conveyances to the Bank of North Dakota and recording of the conveyance and suspension and reinstatement of tax liens on land acquired by the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-13-14 of the North Dakota Century Code is amended and reenacted as follows:

11-13-14. Auditor's certificate on conveyances to ~~Bank~~ the state of North Dakota - Recording conveyance. Whenever any sheriff's deed or other conveyance of real property acquired by the ~~Bank of North Dakota as agent for the state treasurer as trustee of the~~ state of North Dakota doing business as the Bank of North Dakota or any state agency for which the Bank of North Dakota acts as agent is offered for record, the county auditor shall enter such transfer and the register of deeds shall record the same without regard to the payment of any taxes due thereon. The provisions of sections 11-13-12 and 11-13-13 shall not be applicable thereto. In such case, the county auditor shall enter on the sheriff's deed or other conveyance, over ~~his~~ the county auditor's official signature, the words "Transfer entered", and the register of deeds then shall receive and record the same.

SECTION 2. AMENDMENT. Section 57-29-01 of the North Dakota Century Code is amended and reenacted as follows:

57-29-01. Suspension of tax liens on state acquired lands. In any transaction where the state ~~treasurer as trustee for the state~~ of North Dakota or any of its agencies, departments, or instrumentalities, prior to the taking effect of this code, has acquired, or thereafter shall acquire, title to any tract of land ~~pursuant to the provisions of chapter 54-30,~~ and there are listed and legally charged against the tract unpaid general property or other taxes, or tax sale certificates, or tax deeds, the holders of the liens of the taxes or certificates or tax titles shall be without power to enforce or to effectuate the same. All remedies for the enforcement or enjoyment of the liens or titles shall be suspended wholly and all proceedings to enforce or effectuate the liens or titles subsequent to the acquisition of the tract of land by the ~~said trustee~~ state of North Dakota or any of its agencies, departments, or instrumentalities and during the time the tract is owned by ~~said trustee~~ the state of North Dakota or any of its agencies, departments, or instrumentalities, shall be null and void, except that any tax title acquired previous to the acquisition of title by the ~~said trustee~~ state of North Dakota or any of its agencies, departments, or instrumentalities, may be made effectual and may be enjoyed until the time the ~~said trustee~~ state of North Dakota or any of its agencies, departments, or instrumentalities acquires title based upon

a mortgage or other conveyance previous in time to the due date of the taxes upon which the tax title is based, whereupon all rights, interests, powers, privileges, and immunities theretofore owned and enjoyed under the tax title shall be suspended forthwith, and the ~~said trustee~~ state of North Dakota or any of its agencies, departments, or instrumentalities may enter into possession of the tracts of land and shall have the entire control, use, and enjoyment thereof.

SECTION 3. AMENDMENT. Section 57-29-02 of the North Dakota Century Code is amended and reenacted as follows:

57-29-02. Reinstatement of tax liens upon sale. Upon the sale of tracts of land by the ~~said trustee for the~~ state of North Dakota or any of its agencies, departments, or instrumentalities, and upon payment to ~~him~~ the state of North Dakota or any of its agencies, departments, or instrumentalities of not less than twenty percent of the sale price of the particular tract or tracts sold, the provisions of section 57-29-01 shall become inoperative with respect to such lands, and the general statutory remedies to enforce and effectuate tax liens and titles again shall be applicable.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 102

HOUSE BILL NO. 1244
(Representatives Kelsch, Kroeber, Poolman, Stenehjem)
(Senators W. Stenehjem, Maxson)

SHERIFF'S COMMISSIONS

AN ACT to amend and reenact section 11-15-08 of the North Dakota Century Code, relating to commissions collected by a sheriff.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-15-08. Commissions collected by sheriff.

1. Except as provided in section 11-15-09, the sheriff is entitled to collect commissions on behalf of the county on all moneys received and disbursed by the sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property as follows:

   a. On the first one thousand dollars, fifty dollars.

   b. On all moneys in excess of one thousand dollars, one percent.

2. Except as provided in subsection 3, if no sale is held under subsection 1, the sheriff may not collect a commission.

3. If personal property is taken by the sheriff on an execution, under a requisition in claim and delivery, or under a writ of attachment and applied in satisfaction of the debt without sale, the sheriff is entitled to collect the commission specified in subsection 1 based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer under section 11-15-14.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 103

HOUSE BILL NO. 1067
(Representatives Byerly, A. Olson, Wilkie)
(Senators Goetz, Thane)

SHERIFF'S EXECUTION OF PROCESS

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to levy when more than one execution is outstanding; to amend and reenact sections 11-15-11, 11-15-17, 11-15-18, 11-15-19, 28-21-07, and 28-21-18 of the North Dakota Century Code, relating to executions; and to repeal sections 28-21-19, 28-21-20, 28-21-21, 28-21-22, 28-21-23, and 28-21-24 of the North Dakota Century Code, relating to amercement of a sheriff or clerk of court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-11 of the North Dakota Century Code is amended and reenacted as follows:

11-15-11. Sheriff's expense of preserving property - Approval of court required. ~~The~~ Unless otherwise ordered by the court, the sheriff shall receive the actual expense incurred for taking ~~and~~, transporting, keeping possession of, and preserving property taken under an attachment, execution, or other process ~~only such sum as the court may order. The allowance shall not exceed the actual expense incurred, and no~~. No keeper ~~shall~~ is entitled to receive more than ~~three~~ five dollars per day. Property ~~shall~~ may not be placed in charge of a keeper unless ~~it~~ the property cannot be stored safely and securely, nor unless there is reasonable danger of loss to ~~such~~ the property, nor unless the property is of ~~such~~ a character as to require the personal attention and supervision of a keeper. The sheriff may require the person in whose favor the attachment, execution, or other process was issued to pay, or to provide security for, in advance, all expenses actually incurred in the taking, keeping, transporting, or preserving the property.

SECTION 2. AMENDMENT. Section 11-15-17 of the North Dakota Century Code is amended and reenacted as follows:

11-15-17. Liability for failure to execute process. ~~If~~ Except as otherwise provided by law or order of the court, if the sheriff to whom a writ of execution or attachment is delivered neglects or refuses to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, ~~after being required to do so by the~~ which has been made known to the sheriff by the judgment creditor or ~~his~~ the creditor's attorney, ~~he~~ the sheriff is liable to the creditor for ~~the value of the property~~ all damages sustained by the creditor. The sheriff is not liable if the sheriff has not levied upon or sold property, when the sheriff's failure to act was the result of following the directions or orders of the creditor or the creditor's agent or attorney.

SECTION 3. AMENDMENT. Section 11-15-18 of the North Dakota Century Code is amended and reenacted as follows:

11-15-18. Liability for failure to make return. ~~If~~ Except as otherwise provided by law or order of the court, if the sheriff does not return a notice or process with the necessary endorsement thereon without delay, ~~he~~ or within the time limit required by law, the sheriff is liable to the party aggrieved for all damages sustained by ~~him~~ that party.

SECTION 4. AMENDMENT. Section 11-15-19 of the North Dakota Century Code is amended and reenacted as follows:

11-15-19. Liability for failure to pay over money. ~~If~~ Except as otherwise provided by law or order of the court, if the sheriff neglects or refuses to pay over on demand to the persons entitled thereto any money which came into ~~his~~ the sheriff's hands by virtue of ~~his~~ the sheriff's office, after deducting ~~his legal~~ the sheriff's fees, ~~he~~ expenses, or commissions as authorized by law or the court, the sheriff is liable to ~~such person in the amount thereof with twenty-five percent damages and interest at the rate of ten percent per month from the time of demand~~ the party aggrieved for all damages sustained by that party.

SECTION 5. AMENDMENT. Section 28-21-07 of the North Dakota Century Code is amended and reenacted as follows:

28-21-07. Time of return. The execution ~~must be~~ is returnable to the clerk with whom the record of the judgment is filed within sixty days after its receipt by the officer; except ~~in the case~~ when a sheriff's levy has been made within the sixty days, ~~in which case~~ the execution ~~must be~~ is returnable to the clerk within a reasonable time following the completion of the sale of the property or ninety days after its receipt by the officer. If a levy has been made and the issue of ownership of the property or interest therein is raised by any party, or if the issue whether the property is exempt under chapter 28-22 is raised by either party, the court having jurisdiction may extend, for good cause shown, the execution for a reasonable time to accommodate due notice and hearing to determine these issues and to provide time for the publication of notice of sale and sale of the property subject to execution.

SECTION 6. A new section to chapter 28-21 of the North Dakota Century Code is created and enacted as follows:

Levy when more than one execution is outstanding. If more than one execution against a judgment debtor is outstanding when a levy upon property of a judgment debtor is made, the property must be applied to the execution first received by the sheriff, the balance, if any, of the property must be applied to subsequent executions in order of time as received by the sheriff. However, property of the judgment debtor which was not previously levied upon but which is subject to levy and which is particularly described either in the execution or in a written notice to the sheriff by the judgment creditor or the creditor's agent or attorney must be applied to that execution regardless of time of receipt of the execution by the sheriff.

SECTION 7. AMENDMENT. Section 28-21-18 of the North Dakota Century Code is amended and reenacted as follows:

28-21-18. Return of writ by mail. When execution is issued in any county and directed and delivered to the sheriff or coroner of another county, ~~such~~ the sheriff or coroner having the execution after having discharged all the duties required ~~of him~~ by law shall ~~enclose such~~ mail the execution ~~by mail~~ to the clerk

who issued the ~~same~~ execution. On proof ~~being made~~ by ~~such~~ the sheriff or coroner that the execution was mailed soon enough to have reached the ~~said~~ clerk prior to ~~its~~ the execution's expiration, the sheriff or coroner is not liable for any ~~amercement or~~ penalty if ~~it~~ the execution does not reach the office in due time.

SECTION 8. REPEAL. Sections 28-21-19, 28-21-20, 28-21-21, 28-21-22, 28-21-23, and 28-21-24 of the North Dakota Century Code are repealed.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 104

HOUSE BILL NO. 1501
(Representative Laughlin)

PROPERTY LINE DISPUTES

AN ACT to create and enact a new section to chapter 11-20 and a new subsection to section 27-07.1-17 of the North Dakota Century Code, relating to surveys by county surveyors of disputed property lines and jurisdiction of county courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-20 of the North Dakota Century Code is created and enacted as follows:

Disputed property lines - Petition to county court - Effect of survey - Payment of expenses.

1. One or more owners of property may file with the clerk of county court a petition requesting the county court to direct the county surveyor to survey the property. The county court shall set a time and place for a hearing on the petition. The hearing may not occur until three weeks after the petitioner has published notice of the petition, containing the substance of the petition, a description of the lands affected, and the names of the owners of the affected lands as they appear in the latest tax roll, and after the petitioner has mailed written notice to each occupant of land affected by the survey.

2. At the hearing on the petition, all interested parties may appear and be heard. If the county court finds that there is a dispute as to the location of a property line, the county court may grant the petition. If a county surveyor is not available to conduct the survey, the county court may appoint a registered land surveyor to conduct the survey. The surveyor shall provide reasonable advance written notice to occupants of affected lands specifying the date when the survey will begin.

3. After the survey has been completed, the surveyor shall file a record of survey under sections 11-20-12 and 11-20-13. The certificate of the surveyor is presumptive evidence of the facts contained in the survey and certificate.

4. After the survey has been completed, the surveyor shall make a certified report to the county court showing in detail the entire expense of the survey with recommendations as to apportionment of the expense. The county court shall apportion equitably the expense of the survey to the several tracts affected and provide written notice of the proposed assessment to each owner affected. The notice shall inform the affected owners of their right to appear in county court no sooner than fourteen days after the notices are mailed to object to the assessments. Following consideration of any objections, the county court shall make any

corrections or adjustments necessary, enter an order confirming the assessment, and order the parties to pay the surveyor within thirty days.

5. Upon certification by the surveyor that an affected owner has not paid the fees ordered by the county court within thirty days, the county auditor shall assess the amount against the land of each person affected. The county treasurer shall collect the assessments in the same manner as general property taxes are collected. On the order of the county auditor, the county treasurer shall pay any fees and expenses to a registered land surveyor who has conducted the survey.

SECTION 2. A new subsection to section 27-07.1-17 of the North Dakota Century Code is created and enacted as follows:

Disputed property line proceedings pursuant to section 1 of this Act.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 105

SENATE BILL NO. 2524
(Senators W. Stenehjem, Traynor)

DOMESTIC RELATIONS COURT FEES

AN ACT to create and enact a new subsection to section 11-17-04 of the North Dakota Century Code, relating to fees charged by clerks of district and county courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-17-04 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

For filing a motion to modify an order for alimony, property division, child support, or child custody, twenty dollars. The fee collected under this subsection must be deposited with the county treasurer as provided under section 11-17-05 and thereafter must be deposited with the state treasurer and credited to the state general fund.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 106

SENATE BILL NO. 2296
(Senators Tomac, Lindgren)
(Representatives Jacobs, Nichols)

REGISTER OF DEEDS FEES

AN ACT to amend and reenact section 11-18-05 of the North Dakota Century Code, relating to filing and recording fees charged by the register of deeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-18-05. Fees of register of deeds. The register of deeds shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:

   a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, ~~five~~ seven dollars for the first page and ~~two~~ three dollars for each additional page. In addition, for all documents recorded under this section that list more than five sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.

      (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.

      (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.

      (3) Each real estate instrument must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording.

      (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the front side of each instrument for register of deeds' recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.

   b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, ~~five~~ seven dollars for the first page and ~~two~~ three dollars for each additional page plus three dollars for each such additional ~~instrument~~ document

number or book and page. In addition, for all documents recorded under this section which list more than five separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.

c. Plats, irregular tracts, or annexations, ~~five~~ ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which shall be a single charge of seven dollars.

2. For filing any instrument, five dollars.

3. For making certified copies of any recorded instrument, the charge is five dollars for the first page and two dollars for each additional page.

4. For making a copy of any other filed instrument, one dollar for each five pages or portion thereof.

5. For filing, indexing, making, or completing any statement, abstract, or certificate under the Uniform Commercial Code, the fee is the same as that provided in sections 41-09-42 and 41-09-43, as applicable.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 107

SENATE BILL NO. 2248
(Senator Krauter)
(Representative Kerzman)

CORONER DUTIES OF EMT

AN ACT to amend and reenact section 11-19-19 of the North Dakota Century Code, relating to instances in which an emergency medical technician may perform the duties of coroner in certain counties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-19-19 of the North Dakota Century Code is amended and reenacted as follows:

11-19-19. Acting coroner. When there is no coroner~~, or in case of his absence or inability to act, the sheriff of the county, the state highway patrol, or any special agent of the bureau of criminal investigation is~~ or the coroner is absent or unable to act, the following persons are authorized to perform the duties of coroner in relation to dead bodies:

1. The sheriff of the county, a state highway patrol officer, or any special agent of the bureau of criminal investigation.

2. An emergency medical technician who has received previous written notification from the attending physician of the deceased person that the person was suffering from an illness known to be terminal.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 108

SENATE BILL NO. 2094
(Political Subdivisions Committee)
(At the request of the State Auditor)

COUNTY AND CITY BUDGET PREPARATION

AN ACT to amend and reenact sections 11-23-02, 40-40-04, 40-40-05, 40-40-06, 40-40-08, and 40-40-09 of the North Dakota Century Code, relating to preparing the budget of a municipality or a county.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-23-02 of the North Dakota Century Code is amended and reenacted as follows:

11-23-02. Auditor to prepare budget of county expenditures. The county auditor shall prepare ~~annually estimates of county receipts and expenditures for the ensuing year~~ an annual budget for the general fund, each special revenue fund, and each debt service fund of the county in the form prescribed by the ~~state tax commissioner and~~ state auditor. ~~Such annual~~ The budget ~~shall~~ must set forth specifically:

~~1. The estimated aggregate annual expenditures from each fund for the current fiscal year.~~

~~2. The estimated amount of money received in the current fiscal year from all sources which is available for any purpose.~~

~~3. The amount required for each department, public office, and public official, for each public improvement, for the maintenance of each public building, structure, or institution, for the maintenance of public highways, roads, streets, and bridges, for the construction, operation, and maintenance of each public utility, and for each and every purpose authorized by law for which it is desired to raise money for the ensuing year including all contemplated undertakings proposed for the ensuing year.~~

~~4. The estimated balance standing to the credit or debit of the several funds and the estimated aggregate amount in all funds at the end of the fiscal year.~~

~~5. The amount of uncollected taxes standing to the credit of the county.~~

~~6. An estimate of the probable amount that may be received during the ensuing year from sources other than direct property taxes.~~

~~7. The aggregate amount proposed to be raised for all purposes.~~

~~8. The amount of the bonded indebtedness of the county, specifying as to each issue the purpose for which issued, the date of issue, the date of maturity, the amount originally issued, the amount outstanding, the rate~~

~~of interest, and the sum necessary for interest and for sinking fund purposes.~~

~~9. The amount required for all interest and sinking fund purposes for the ensuing year.~~

~~10. The amount required to retire all other indebtedness lawfully incurred and to pay interest thereon.~~

~~11. The amount required for the cash reserve of the county.~~

1. The detailed breakdown of the estimated revenues and appropriations requested for each fund for the ensuing year.

2. The detailed breakdown of the revenues and expenditures for each fund for the preceding year.

3. The detailed breakdown of estimated revenues and expenditures for each fund for the current year.

4. The transfers in or out for each fund for the preceding year and the estimated transfers in or out for the current year and the ensuing year.

5. The beginning and ending balance of each fund or estimates of the balances for the preceding year, current year, and ensuing year.

6. The tax levy request for any funds levying taxes for the ensuing year.

7. The certificate of levy showing the amount levied for each fund and the total amount levied.

8. The budget must be prepared on the same basis of accounting used by the county for its annual financial reports.

9. The amount of cash reserve for the general fund and each special revenue fund, not to exceed seventy-five percent of the appropriation for the fund.

The county auditor shall transmit one copy of such annual budget to the state auditor no later than January first of each year.

SECTION 2. AMENDMENT. Section 40-40-04 of the North Dakota Century Code is amended and reenacted as follows:

40-40-04. Municipality to prepare preliminary budget statement. The governing body of each municipality, annually on or before September tenth, shall make, on suitable blanks prescribed by the ~~state tax commissioner and~~ state auditor, an itemized statement known as the preliminary budget statement showing the amounts of money which, in the opinion of the governing body, will be required for the proper maintenance, expansion, or improvement of the municipality during the ~~fiscal~~ year, and giving ~~such~~ other information relating to the finances of the municipality as the ~~tax commissioner and~~ state auditor may require.

SECTION 3. AMENDMENT. Section 40-40-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-40-05. Contents of preliminary budget statement. ~~A preliminary budget must be prepared as required by generally accepted accounting principals.~~ The preliminary budget must ~~set forth specifically:~~

~~1. An estimated revenue schedule for the general fund of the municipality, including the following information:~~

~~a. The actual revenues received from all sources during the preceding fiscal year.~~

~~b. The estimated revenues from all sources for the current fiscal year.~~

~~c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.~~

~~2. An appropriations schedule for the general fund of the municipality, including the following information:~~

~~a. The actual expenditures for all purposes for the preceding fiscal year.~~

~~b. The estimated expenditures for all purposes for the current fiscal year.~~

~~c. The estimated expenditures for all purposes for the ensuing fiscal year. Expenditures must be segregated and itemized as follows:~~

~~(1) Current expenditures. This must include all maintenance and operation expenses, including all wages, salaries, and other items which comprise the current expenditures of the municipality. Although the whole amount paid for wages and salaries may be stated in one sum in the budget statement, there must be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries or wages and the annual amount paid to each person. Municipalities may include an item of expense for equipment replacement, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing fiscal year, based on current costs, on all equipment owned by the city, and no expenditure may be paid out of said equipment replacement fund except for the purchase of equipment to replace equipment which is worn out, damaged, or obsolete. The term "equipment" does not include structures or building fixtures. The expense for equipment replacement must be placed in a separate fund. Current expenditures are categorized as general government, public safety, public works, health and welfare, culture and recreation, and other budgeted items of a current nature.~~

~~(2) Capital expenditures. This must include all capital and betterment expenditures, including new construction, major repairs, and all other items which go toward adding to the permanent improvement and value of the municipal property an item which shall be placed in a separate fund as a building reserve. The building reserve fund item may not exceed the total of the~~

~~anticipated reasonable costs of depreciation for the ensuing fiscal year, based on the original costs of all buildings and structures owned by the city, and no expenditures may be paid out of the said fund except for purchase, construction, or reconstruction to replace buildings or structures which are obsolete, substandard, or generally unfit for public use.~~

~~(3) Debt service expenditures. This must cover all debt retirement requirements, including all amounts required to retire floating indebtedness, bonded indebtedness, and to pay interest thereon during the current fiscal year.~~

~~3. A separate schedule for each special revenue fund of the municipality, including the following information:~~

~~a. The actual revenues received from all sources during the preceding fiscal year.~~

~~b. The estimated revenues from all sources for the current fiscal year.~~

~~c. An estimate of the probable amounts that may be received during the ensuing fiscal year from sources other than direct property taxes.~~

~~d. The actual expenditures for all purposes for the preceding fiscal year.~~

~~e. The estimated expenditures for all purposes for the current fiscal year.~~

~~f. The estimated expenditures for all purposes for the ensuing fiscal year.~~

~~4. A separate schedule for each enterprise fund of the municipality, including the following information:~~

~~a. The estimated revenues for the current fiscal year.~~

~~b. The estimated revenues for the ensuing fiscal year.~~

~~c. The estimated expenditures for the current fiscal year.~~

~~d. The estimated expenditures for the ensuing fiscal year.~~

~~5. The estimated cash balance standing to the debit or credit of the municipality at the end of the current fiscal year for the general fund, each special revenue fund, and each enterprise fund~~

include a detailed breakdown of the estimated revenues and appropriations requested for the ensuing year for the general fund, each special revenue fund, and each debt service fund of the municipality. The revenue and expenditure items for the preceding year and estimates of the revenue and expenditures for the current year must be included for each fund to assist in determining the estimated revenues and appropriation requested for the ensuing year. The budget must also include any transfers in or out and the beginning and ending fund balance for each of the funds. The budget must be prepared on the same basis of accounting used by the municipality for its annual financial reports.

The amount paid for salaries may be shown as a single line item expenditure in each fund. There must be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries, the annual amount paid to each person, and the fund charged.

While preparing the budget, municipal officials may include an expenditure item for equipment replacement, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing year, based on current costs, of all equipment owned by the municipality. The expenditure for equipment replacement must be placed in a separate special revenue fund. No expenditure may be paid from the equipment replacement fund except for equipment purchases to replace equipment that is worn out, damaged, or obsolete. The term "equipment" does not include structures or building fixtures.

While preparing the budget, municipal officials may include an expenditure item for a building reserve fund, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing year, based on the original costs of all buildings and structures owned by the city. The expenditure for building reserve must be placed in a separate capital projects fund. No expenditures may be paid from the building reserve fund except for the purchase, construction, or remodeling of buildings or structures that are obsolete, substandard, or generally unfit for public use.

SECTION 4. AMENDMENT. Section 40-40-06 of the North Dakota Century Code is amended and reenacted as follows:

40-40-06. Notice of preliminary budget statement - Contents - How given. After the governing body has prepared the preliminary budget statement, the auditor of the municipality shall give notice that:

1. The preliminary budget is on file in the office of the auditor and ~~that such budget~~ may be examined by anyone ~~requesting to do so~~ upon request.
2. The governing body shall meet no later than October first at the time and place specified in the notice as prescribed by subsection 3 for the purpose of adopting the final budget and making the annual tax levy~~, but no later than October first~~.
3. The governing body shall hold a public session at ~~such~~ the time and place designated in the notice of hearing at which any taxpayer may appear and discuss with ~~such~~ the body any item of proposed expenditures or may object to any item ~~thereof~~ or ~~to the~~ amount ~~of any such item~~.

The notice ~~shall~~ must contain a statement of the total proposed expenditures ~~under~~ for each ~~group provided for~~ fund in the preliminary budget ~~and of the total proposed expenditures under all such groups~~, but need not contain any detailed statement of the proposed expenditures. ~~Such~~ The notice ~~shall~~ must be published at least once, not less than six days prior to the budget hearing, in a newspaper published in the municipality, if there is one, and if no newspaper is published in the municipality, the notice ~~shall~~ must be published not less than six days prior to ~~such~~ the meeting in the official city newspaper as provided by section 40-01-09.

SECTION 5. AMENDMENT. Section 40-40-08 of the North Dakota Century Code is amended and reenacted as follows:

40-40-08. Hearing of protests and objections - Changes in preliminary budget - Preparation of final budget - Contents. The governing body shall meet at the time and place specified in the notice and shall hear any and all protests or objections to the items or amounts set forth in the preliminary budget statement. At the hearing, the governing body shall make any changes in the items or amounts shown on the preliminary budget statement as it may deem advisable except as limited in this chapter, and shall prepare the final budget, which ~~shall~~ must consist of the preliminary budget with the addition of columns showing:

1. The final appropriations ~~made on account of~~ for the various expenditure items ~~of expenditures~~ specified in the preliminary budget statement~~, but the~~. The final appropriation~~, as to any group total, shall~~ of any fund total may not exceed the total amount ~~specified~~ requested in the preliminary budget ~~estimate~~.

2. The estimated amount of unencumbered cash on hand at the end of the current ~~fiscal~~ year~~, which shall~~ may not include cash or investments of the equipment replacement fund as provided ~~for~~ in section 40-40-05.

3. ~~The amount of uncollected taxes standing to the credit of the municipality which, in the opinion of the governing body, may be collected during the ensuing fiscal year.~~

4. ~~The estimated income that may be received during the ensuing year from sources other than direct property taxes.~~

5. The ~~net~~ levy amount ~~which it will be necessary to raise by taxation to meet the appropriations~~ determined by subtracting the total resources from the total appropriations and cash reserve for each fund. The governing body may increase the levy an additional five percent for delinquent tax collections.

~~6.~~ 4. The ~~amount~~ certificate of levy ~~estimated to be necessary to provide such net amount of revenue during the fiscal year~~ which includes a summary of the amount levied for each fund and the total amount levied.

SECTION 6. AMENDMENT. Section 40-40-09 of the North Dakota Century Code is amended and reenacted as follows:

40-40-09. Determination of amount to be levied - Adoption of levy - Limitations. After completing the final budget on or before October first, the governing body shall proceed to make the annual tax levy in an amount sufficient to meet the expenses ~~of~~ for the ensuing ~~fiscal~~ year as determined at the budget meeting. In determining the amount required to be levied, the governing body first shall ascertain its net current resources by adding ~~together the totals shown in the columns described in subsections 2, 3, and 4 of section 40-40-08. Such total amount shall be considered net current resources of the district~~ the estimated revenue for the ensuing year other than property taxes, any transfers in, and the estimated fund balance at the end of the current year. Then the governing body shall ascertain its appropriation and reserve by adding the final appropriation for the ensuing year, any transfers out, and the cash reserve. The net current resources ~~shall~~ must be deducted from the ~~total amount estimated to be appropriated,~~ appropriation and reserve and the balance shall be considered the amount ~~which~~ that is required to be raised by taxation during the ensuing year. The determination of the amount of the levy ~~which~~ that can be collected within the

ensuing ~~fiscal~~ year ~~shall~~ must be made by the governing body based upon the past experience of the district. The levy as finally ~~fixed shall be~~ adopted ~~in the form of an ordinance termed the annual appropriation bill~~ must be approved by a majority vote of the members of the governing body and noted in the proceedings of the governing body. The amount levied ~~shall be~~ is subject to ~~such~~ the limitations as ~~are~~ prescribed by the laws of this state, and ~~shall be~~ is subject to the further limitation that ~~such~~ the amount ~~shall~~ may not exceed the ~~amount which will produce the funds required~~ levy requested by the municipality ~~within the fiscal year period for which the levy is being made. Such ordinance shall~~. The levy adopted must appropriate in specific amounts the ~~sums of~~ money necessary to meet the expenses and liabilities of the municipality.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 109

HOUSE BILL NO. 1267
(Representatives Mahoney, Svedjan)
(Senators Langley, Lindgren)

POLITICAL SUBDIVISION CONTRIBUTIONS

AN ACT relating to political subdivisions and nonprofit medical foundations; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Contribution of funds - Nonprofit medical foundation. A political subdivision may provide public funds not in excess of twenty thousand dollars a year to a nonprofit medical foundation. The funds must be used for improvements to an existing health care facility whose purpose includes providing services to the poor, scholarships, or endowments for scholarships to encourage the education of persons in financial need, or the acquisition of medical equipment needed by the health care facility to continue providing services to the poor. A political subdivision may not provide funds to a nonprofit medical foundation for the support of a health care facility that is not financially viable.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 1995, and after that date is ineffective.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 110

SENATE BILL NO. 2289
(Senators Lindaas, Redlin)
(Representatives Aarsvold, Kaldor, Laughlin)

RECREATION SERVICE DISTRICT SIZE

AN ACT to amend and reenact section 11-28.2-01 of the North Dakota Century Code, relating to establishment of recreation service districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

11-28.2-01. Establishment of recreation service districts - Petition - Purpose. The board of county commissioners of any county in this state, at any meeting of such board, by majority vote of all of the members may, upon the petition of ten percent of the persons who qualify pursuant to section 11-28.2-03 as voters of an area to be included within a proposed recreation service district, call for an election of all of the qualified voters of such district to determine the question of the establishment of a recreation service district for the purpose of providing police protection, sewer and water, garbage removal services, and public road construction and maintenance, in addition to that provided by the local governing body or agency to summer homes, cottages, and other residences and establishments as may exist within such area, and provide for the improvement and control of the environmental quality of the recreation service district. Said recreation service district shall be limited in size and location to an area which is contiguous to or within one-quarter mile [402.34 meters] of the recreational waters of the area or to the areas of land which are dedicated to public use for recreational purposes. In addition, said district shall consist of not less than ~~one hundred~~ fifty privately owned seasonal homes or cottages and other residences and establishments. If a petition is presented to the board of county commissioners calling for such election, such petition shall be accompanied by such information as the board of county commissioners shall require, including the boundaries of the proposed recreation district, the approximate number of qualified voters as defined in section 11-28.2-03, and a sufficient deposit of money to cover all costs of such election. Within sixty days after the calling of such an election, the board of county commissioners shall provide an election on the question of whether or not a recreation service district should be established and shall establish procedures for voting and other necessary matters not inconsistent with the provisions of this chapter. The county commissioners shall give at least thirty days' notice of the election by certified mail to all qualified voters as defined in section 11-28.2-03. If a majority of the qualified voters approve of the establishment of a recreation service district, such district shall then be organized.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 111

HOUSE BILL NO. 1057
(Legislative Council)
(Interim Waste Management Committee)

WASTE MANAGEMENT

AN ACT to amend and reenact sections 11-33-01, 11-33-20, 23-29-03, subsection 11 of section 23-29-04, subsection 3 of section 23-29-06, and section 23-29-07 of the North Dakota Century Code and section 1 of chapter 283 of the 1991 Session Laws of North Dakota, relating to county power to regulate property, joint zoning authority over solid waste disposal facilities, definitions, powers and duties of the state department of health and consolidated laboratories, solid waste management district board membership, permits for solid waste management facilities and solid waste transporters, and to prohibit the state department of health and consolidated laboratories from issuing permits for the construction or operation of certain solid waste disposal facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

11-33-01. County power to regulate property. For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county ~~is hereby empowered to~~ may regulate and restrict within the county, subject to ~~the provisions of~~ section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities.

SECTION 2. AMENDMENT. Section 11-33-20 of the North Dakota Century Code is amended and reenacted as follows:

11-33-20. Township zoning not affected - Township and city may relinquish powers - Joint zoning authority over solid waste disposal facilities. ~~The provisions of this~~ This chapter ~~shall in no way~~ does not prevent townships from making regulations as provided in sections 58-03-11 through 58-03-15, but such townships may relinquish their powers, or any portion thereof, to enact zoning regulations to the county by resolution of the board of township supervisors. ~~The provisions of this~~ This chapter ~~shall~~ may not be construed to affect any property, real or personal, located within the zoning or subdivision authority of any city of this state, except that any ~~such~~ city by resolution of its governing body may relinquish to the county its authority, or any portion thereof, to enact zoning regulations under chapter 40-47 or subdivision regulations under chapter 40-48, in which case ~~such~~ the property ~~shall be~~ is subject to ~~the provisions of~~ this chapter.

A solid waste disposal or incineration facility must meet the zoning requirements of both the county and township where the facility is located unless the township has relinquished zoning authority to the county.

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

[1] **23-29-03. Definitions.**

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.

2. "Department" means the state department of health and consolidated laboratories.

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. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.

5. "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.~~ 6. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.

~~6.~~ 7. "Litter" means discarded and abandoned solid waste materials.

~~7.~~ 8. "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.~~ 9. "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 or industrial waste.

~~9.~~ 10. "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.

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[1] NOTE: Section 23-29-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~10.~~ 11. "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.~~ 12. "Political subdivision" means a city, county, township, or solid waste management authority.

~~12.~~ 13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from municipal waste.

~~13.~~ 14. "Solid 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. The term does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges 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.].

~~14.~~ 15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.

~~15.~~ 16. "Special waste" means ~~nonhazardous~~ solid waste~~, including:~~ that is not a hazardous waste ~~from the combustion or gasification of municipal waste; waste from industrial and manufacturing processes;~~ regulated under chapter 23-20.3 and includes waste generated 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 or industrial waste.

~~16.~~ 17. "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.

~~17.~~ 18. "Transport" means the offsite movement of solid waste.

SECTION 4. AMENDMENT. Subsection 11 of section 23-29-04 of the North Dakota Century Code is amended and reenacted as follows:

11. Adopt rules to establish categories and classifications of solid waste and solid waste management facilities based on waste type and quantity, facility operation, or other facility characteristics and to limit, restrict, or prohibit the disposal of solid wastes based on environmental or public health rationale.

SECTION 5. AMENDMENT. Subsection 3 of section 23-29-06 of the North Dakota Century Code is amended and reenacted as follows:

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 each city in the district which has a population of more than ten thousand, 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.

SECTION 6. AMENDMENT. Section 23-29-07 of the North Dakota Century Code is amended and reenacted as follows:

[2] **23-29-07. Permits.** The department ~~is hereby authorized to~~ may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. Upon submission to the department of an application for a solid waste management facility permit, the applicant shall provide written notice of the application to the solid waste management district board of the district in which the facility is to be located. Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. All ~~such~~ permits are nontransferable ~~and~~, are for a term of not more than ~~five~~ ten years from the date of issuance~~. All such permits so issued~~, and are conditioned upon the observance of the laws of the state and the rules ~~and regulations authorized herein~~ adopted under this chapter. If the jurisdiction with zoning authority over the area in which the solid waste management facility is to be located has not held a public hearing regarding the siting of the facility, the solid waste management district board of the district in which the facility is to be located shall conduct a public meeting to receive comments regarding the siting of the facility before the department may issue a permit for the facility. If the solid waste management district board conducts a public meeting, the board shall forward a copy of the meeting minutes to the department.

SECTION 7. AMENDMENT. Section 1 of chapter 283 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

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

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[2] NOTE: Section 23-29-07 was also amended by section 15 of House Bill No. 1005, chapter 5, and by section 1 of House Bill No. 1445, chapter 267.

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 to provide sufficient time during which the department shall adopt the ~~regulations~~ rules necessary to ~~obtain a permit for~~ regulate those solid waste disposal facilities. The period of suspension is until the effective date of rules adopted by the department to regulate those facilities or until January 1, 1994, whichever is earlier. 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. The nine-month period under which the department has to adopt rules under subsection 2 of section 28-32-02 does not apply to rules adopted pursuant to the requirement under this section that rules be adopted by January 1, 1994.

SECTION 8. EMERGENCY. Sections 4, 6, and 7 of this Act are declared to be an emergency measure.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 112

SENATE BILL NO. 2083
(Industry, Business and Labor Committee)
(At the request of the State Electrical Board)

COAL MINES AND ELECTRICIANS

AN ACT to create and enact a new section to chapter 43-09 of the North Dakota Century Code, relating to coal mines subject to the jurisdiction of the federal mine safety and health administration; and to amend and reenact sections 11-33-01 and 43-09-13.1 of the North Dakota Century Code, relating to the power of a county to regulate property and apprentice electrician registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1057 as approved by the fifty-third legislative assembly becomes effective, section 11-33-01 of the North Dakota Century Code, as amended by House Bill No. 1057, is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Section 43-09-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-09-13.1. Apprentice electrician registration. An apprentice electrician shall register with the state electrical board ~~after~~ within the first six months of employment and shall pay an annual registration fee in an amount set by the board. An apprentice electrician may ~~not~~ work on installations ~~without~~ only under the personal supervision of a licensed electrician as provided in section 43-09-18.

SECTION 3. A new section to chapter 43-09 of the North Dakota Century Code is created and enacted as follows:

Exemption for coal mines. The jurisdiction of the board and other requirements of this chapter do not apply to installations, wiring, apparatus, or equipment that are part of a coal mine permitted by the public service commission and are subject to the jurisdiction of the federal mine safety and health administration.

Approved April 19, 1993
Filed April 20, 1993

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 113

SENATE BILL NO. 2244
(Senators Tallackson, Freborg)
(Representatives Grosz, Kilichowski)

INMATE CONFINEMENT TIME IN JAILS

AN ACT to amend and reenact section 12-44.1-06 of the North Dakota Century Code, relating to the length of time inmates may be confined in grade one and grade two jail facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-44.1-06. Grades of jail facilities.

1. The department of corrections and rehabilitation shall, following inspection pursuant to section 12-44.1-24, grade jails as to length of allowable inmate confinement based upon construction, size, and usage, as follows:

~~1.~~ a. "Grade one" means a jail for confining inmates not more than one year.

~~2.~~ b. "Grade two" means a jail for confining inmates not more than ninety days.

~~3.~~ c. "Grade three" means a jail for confining inmates not more than ninety-six hours.

2. The length of confinement of a prisoner may be temporarily increased on a case-by-case basis in grade one and grade two jails upon the request of the jail administrator and the approval of the department of corrections and rehabilitation.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 114

SENATE BILL NO. 2150
(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

INMATES' RIGHTS, RECORDS, AND PROBATION

AN ACT to amend and reenact sections 12-47-12, 12-47-36, and subsection 1 of section 12.1-32-07 of the North Dakota Century Code, relating to the authority of the warden to make rules and regulations, confidentiality of inmates' records, and supervision of a probationer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-12. Warden to make rules and regulations. The warden, subject to the approval of the director of the division of adult services, shall make rules and regulations not in conflict with the laws of this state and shall prescribe penalties for the violation thereof:

1. For the admission of visitors, but admission of visitors shall not be limited to less than four days in each week.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of prisoners committed to the state penitentiary.

A printed copy of the rules and regulations must be furnished to each person committed to the penitentiary at the time of admission and to each official or employee thereof at the time of hire. Two copies of such rules must be furnished to the state law library for the use of the state officials and the public. Such rules must be explained to ~~each~~ a prisoner ~~in the prisoner's native language if the prisoner~~ who cannot read English.

SECTION 2. AMENDMENT. Section 12-47-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-47-36. Certain penitentiary inmates' records confidential. The clinical, behavioral, treatment, medical, and social records and materials of a penitentiary inmate, regardless of source, are confidential and privileged and may not be disclosed directly or indirectly to the inmate or anyone other than the parole board, a public or private treatment facility, a recognized law enforcement agency, and others entitled by law to receive such information. A state or federal court may order the inspection of such confidential and privileged records and materials, or parts thereof, by individuals or organizations having shown a proper legitimate purpose and reason to inspect such records and materials.

[1] **SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In ~~all other~~ class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party selected by the court. In all other cases, the court may place the defendant under the supervision and management of a responsible party selected by the court.

Approved March 16, 1993
Filed March 16, 1993

[1] NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by sections 1 and 2 of House Bill No. 1078, chapter 132; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

CHAPTER 115

SENATE BILL NO. 2148
(Government and Veterans Affairs Committee)
(At the request of the Department of Corrections and Rehabilitation)

PENITENTIARY INMATE ACCOUNTS

AN ACT to amend and reenact subsections 1 and 4 of section 12-48-15 of the North Dakota Century Code, relating to penitentiary inmate accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 4 of section 12-48-15 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The warden of the penitentiary shall keep an account for each inmate. ~~Fifty~~ Not more than fifty percent of ~~the~~ an inmate's penitentiary earnings ~~of inmates~~, as provided by penitentiary rules, must be deposited ~~to the credit of their account until they have accumulated in that account~~ in a separate account for the inmate to accumulate a sum of money ~~as provided by penitentiary rules and regulations from their earnings at the penitentiary, and the other fifty percent~~ until the inmate's release from the penitentiary. The remainder of ~~the~~ an inmate's earnings must be paid to the ~~inmates~~ inmate on a regular basis. All moneys in the inmate's account must be paid to the inmate in full when discharged.

4. The warden, through the staff, is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of court costs, court-appointed counsel fees, and court-ordered restitution, and to provide for their dependent relatives or to provide for their own medical, surgical, or dental treatment or services not generally provided by the state. The sum of money as provided by penitentiary rules ~~and regulations~~ from each inmate's earnings required to be deposited and accumulated by this section ~~shall~~ is not ~~be~~ available to the inmate until discharge, unless authorized by the warden. The remainder of the inmate's earnings, including interest earned, ~~shall be~~ is available to the inmate under the supervision and control of the warden or designee.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 116

SENATE BILL NO. 2141
(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

DETAINER FOR PAROLE

AN ACT to amend and reenact section 12-59-07 of the North Dakota Century Code, relating to elimination of detainer as a requirement precedent to parole.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-07. Requirements precedent to parole. No parole shall be granted to any person confined in the penitentiary or the Missouri River correctional center unless~~:~~

~~1.~~ ~~He~~ the person has maintained a good record at the penitentiary or the Missouri River corrrectional center for a reasonable period prior to ~~his~~ application for a parole and the board is convinced that the applicant will conform to all the rules and regulations adopted by said board~~; or~~

~~2. A detainer has been lodged by another authority~~.

Approved March 4, 1993
Filed March 5, 1993

CRIMINAL CODE

CHAPTER 117

SENATE BILL NO. 2171
(Senators Nalewaja, Evanson, Nelson, W. Stenehjem)
(Representatives Carlisle, Mahoney)

ENTRAPMENT

AN ACT to amend and reenact subsection 2 of section 12.1-05-11 of the North Dakota Century Code, relating to the entrapment defense.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-05-11 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Entrapment occurs when a~~ A law enforcement agent ~~induces the commission of an offense, using persuasion or other means likely to cause normally law-abiding persons to commit the offense~~ perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, the law enforcement agent induces or encourages and, as a direct result, causes another person to engage in conduct constituting such a crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 118

SENATE BILL NO. 2373
(Senators Solberg, Evanson, Naaden)
(Representatives Boehm, Johnson, Sitz)

MURDER DEFINED

AN ACT to amend and reenact section 12.1-16-01 of the North Dakota Century Code, relating to the definition of murder.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if ~~he~~ the person:

   a. Intentionally or knowingly causes the death of another human being;

   b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or

   c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, a felony offense against a child under section 12.1-20-03, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 14-09-22, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, ~~he, or another~~ the person or any other participant~~, if there be any,~~ in the crime causes the death of any person~~; except that in~~. In any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

      (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and

      (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and

      (3) Reasonably believed that no other participant was armed with such a weapon; and

      (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

   Subdivisions a and b ~~shall be~~ are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under circumstances which would be class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in ~~his~~ that person's situation under the circumstances as ~~he~~ that person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 119

SENATE BILL NO. 2303
(Senators Kelly, DeMers, W. Stenehjem)
(Representatives Dalrymple, Kaldor, Mahoney)

JUDICIAL PROCEEDING ASSAULT

AN ACT to amend and reenact section 12.1-17-01 of the North Dakota Century Code, relating to simple assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if ~~he~~ that person:

   a. Willfully causes bodily injury to another human being; or

   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

2. Simple assault is a class B misdemeanor except when the victim is a peace officer or correctional institution employee acting in an official capacity, ~~and~~ which the actor knows ~~that~~ to be a fact, or any person engaged in a judicial proceeding, in which case the offense is a class C felony.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 120

HOUSE BILL NO. 1237
(Representatives Carlisle, Henegar, Ring)
(Senators DeMers, Nething, Heinrich)

STALKING PROHIBITION

AN ACT to create and enact a new section to chapter 12.1-17 and a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the crime of stalking and to notification of the crime of stalking when a protection order is issued; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

Stalking.

1. As used in this section:

   a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term does not include constitutionally protected activity.

   b. "Stalk" means to engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to experience fear, intimidation, or harassment.

2. No person may intentionally stalk another person.

3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.

4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.

5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. a. A person who violates this section is guilty of a class C felony if:

(1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07 or a similar offense in another state, involving the victim of the stalking;

(2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or

(3) The person previously has been convicted of violating this section.

b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

SECTION 2. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Notification of stalking law. When an order is issued under section 14-07.1-02 or 14-07.1-03, the order must include or have attached to it a copy of section 1 of this Act.

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

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 121

SENATE BILL NO. 2253
(Senators Evanson, Robinson)
(Representatives Pyle, Wentz, Kelsch)

SEX OFFENSE EVIDENCE

AN ACT to create and enact a new section to chapter 12.1-20 of the North Dakota Century Code, relating to the admissibility of evidence regarding a victim's manner of dress in sex offense cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is created and enacted as follows:

Admissibility of evidence of victim's manner of dress in sex offense cases. In any prosecution for a violation of this chapter, or for an attempt to commit an offense defined in this chapter, evidence of the manner in which the victim was dressed at the time of the commission of the offense is not admissible unless the court determines the evidence:

1. Is material to a fact at issue in the case and the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and

2. Is relevant and admissible. This determination may be made only after an offer of proof by the proponent; a finding by the court that the offer of proof is sufficient; a hearing out of the presence of the jury, if any, during which the victim may question the offer of proof; and, if the court finds the evidence is relevant and is not legally inadmissible, an order by the court stating what evidence may be introduced and the nature of questions to be permitted.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 122

SENATE BILL NO. 2041
(Legislative Council)
(Interim Judiciary Committee)

DEVELOPMENTAL DISABILITY GUARDIAN AD LITEM

AN ACT to amend and reenact section 12.1-20-16 of the North Dakota Century Code, relating to the appointment of a guardian ad litem to represent a person with a developmental disability in prosecution of sex offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses. A minor or a person with a developmental disability who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, or section 12.1-20-11 may, at the discretion of the court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the ~~child~~ minor or the person with a developmental disability. A person who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem must receive notice of and may attend all depositions, hearings, and trial proceedings to support the ~~child~~ minor or the person with a developmental disability and advocate for the protection of the ~~child~~ minor or the person with a developmental disability but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the ~~state~~ supreme court if the action is prosecuted in district court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in county court pursuant to subsection 8 of section 27-07.1-17.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 123

HOUSE BILL NO. 1345
(Representatives Pyle, Brodshaug)

DECEPTION

AN ACT to amend and reenact subdivision a of subsection 2 of section 12.1-23-10 of the North Dakota Century Code, relating to the definition of deception.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 12.1-23-10 of the North Dakota Century Code is amended and reenacted as follows:

a. Creating or reinforcing a false impression~~, including false impressions~~ as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise ~~shall~~ may not be inferred from the fact alone that ~~he~~ the person did not substantially perform the promise unless it is part of a continuing scheme to defraud; or

Approved April 1, 1993
Filed April 2, 1993

[1] NOTE: Section 12.1-23-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 124

SENATE BILL NO. 2453
(Senators W. Stenehjem, Grindberg, Schoenwald)
(Representatives Coats, Kretschmar, Maragos, Stenehjem)

LOTTERY ADVERTISING

AN ACT to amend and reenact section 12.1-28-02 of the North Dakota Century Code, relating to gambling offenses and dissemination of information about a lottery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-28-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-28-02. Gambling - Related offenses - Classification of Offenses. Except as permitted by law:

1. It is an infraction to engage in gambling on private premises where the total amount wagered by an individual player exceeds twenty-five dollars per individual hand, game, or event.

2. It is a class A misdemeanor to:

   a. Sell, purchase, receive, or transfer a chance to participate in a lottery, whether the lottery is drawn in state or out of state, and whether the lottery is lawful in the other state or country;

   b. Disseminate information about a lottery with intent to encourage participation in it, except that a legal lottery may be advertised in North Dakota; or

   c. Engage in gambling on private premises where the total amount wagered by an individual player exceeds five hundred dollars per individual hand, game, or event.

3. ~~Subsection 2 shall apply to a lottery drawn or to be drawn outside of this state, whether or not such lottery is lawful in such other state or country.~~

4. ~~4.~~ A person is guilty of a class C felony if ~~he~~ that person engages or participates in the business of gambling. Without limitation, a person ~~shall be~~ is deemed to be engaged in the business of gambling if ~~he~~ that person:

   a. Conducts a wagering pool or lottery;

   b. Receives wagers for or on behalf of another person;

   c. Alone or with others, owns, controls, manages, or finances a gambling business;

d. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house;

e. Maintains for use on any place or premises occupied by ~~him~~ that person a coin-operated gaming device; or

f. Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.

~~5.~~ 4. a. As used in subsection 4 3 but with the exceptions provided by subdivision b of this subsection, the term "coin-operated gaming device" means any machine ~~which~~ that is:

(1) A so-called "slot" machine ~~which~~ that operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; or

(2) A machine ~~which~~ that is similar to machines described in paragraph 1 and is operated without the insertion of a coin, token, or similar object.

b. The term "coin-operated gaming device" does not include a bona fide vending or amusement machine in which gambling features are not incorporated as defined in section 53-04-01, or an antique "slot" machine twenty-five years old or older ~~which~~ that is collected and possessed by a person as a hobby and is not maintained for the business of gambling.

c. A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under chapter 29-31.1.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 125

HOUSE BILL NO. 1238
(Representatives Rydell, Oban, Kelsch)
(Senators DeMers, Robinson, Freborg)

DISORDERLY CONDUCT

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to the issuance of a disorderly conduct restraining order; to amend and reenact section 12.1-31-01 of the North Dakota Century Code, relating to disorderly conduct; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-01. Disorderly conduct. ~~A person~~

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by ~~his~~ the individual's behavior, ~~he~~ the individual:

   ~~1.~~ a. Engages in fighting, or in violent, tumultuous, or threatening behavior;

   ~~2.~~ b. Makes unreasonable noise;

   ~~3.~~ c. In a public place, uses abusive or obscene language, or makes an obscene gesture;

   ~~4.~~ d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;

   ~~5.~~ e. Persistently follows a person in or about a public place or places;

   ~~6.~~ f. While loitering in a public place for the purpose of soliciting sexual contact, ~~he~~ the individual solicits ~~such~~ the contact; ~~or~~

   ~~7.~~ g. Creates a hazardous, physically offensive, or seriously alarming condition by any act ~~which~~ that serves no legitimate purpose; or

   h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.

2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

SECTION 2. A new chapter to title 12.1 of the North Dakota Century Code is created and enacted as follows:

Disorderly conduct restraining order - Penalty.

1. "Disorderly conduct" means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly conduct does not include constitutionally protected activity.

2. A person who is a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct may seek a disorderly conduct restraining order from any court of competent jurisdiction in the manner provided in this section.

3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the disorderly conduct, and that the individual engaged in disorderly conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.

4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subsection 5.

5. The court may grant a disorderly conduct restraining order ordering the respondent to cease or avoid the disorderly conduct or to have no contact with the applicant if:

   a. A person files a petition under subsection 3;

   b. The sheriff serves the respondent with a copy of the temporary restraining order issued under subsection 4 and with notice of the time and place of the hearing;

   c. The court sets a hearing for not later than fourteen days after issuance of the temporary restraining order unless the time period is extended upon written consent of the parties, or upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence; and

   d. The court finds after the hearing that there are reasonable grounds to believe that the respondent has engaged in disorderly conduct. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

6. A restraining order may be issued only against the individual named in the petition. Relief granted by the restraining order may not exceed a period of two years. The restraining order may be served on the respondent by publication pursuant to rule 4 of the North Dakota Rules of Civil Procedure.

7. A disorderly conduct restraining order must contain a conspicuous notice to the respondent providing:

   a. The specific conduct that constitutes a violation of the order;

   b. Notice that violation of the restraining order is punishable by imprisonment of up to one year or a fine of up to one thousand dollars or both; and

   c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.

8. If the respondent knows of an order issued under subsection 4 or 5, violation of the order is a class A misdemeanor. If the existence of an order issued under subsection 3 or 4 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace office has probable cause to believe has violated the order.

9. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of disorderly conduct. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving disorderly conduct.

10. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist any person in the preparation of documents necessary to secure a restraining order under this section.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 126

HOUSE BILL NO. 1225
(Representatives Byerly, DeWitz, Torgerson)
(Senators Krebsbach, Solberg)

ELDERLY ENDANGERMENT

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to care of an elderly adult; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

Endangering an elderly adult - Penalty.

1. In this section, unless the context otherwise requires:

   a. "Caregiver" means a person who is responsible for the care of an elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of an elderly adult.

   b. "Elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.

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

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 127

HOUSE BILL NO. 1479
(Representative Ring)

UNAUTHORIZED PHOTOS

AN ACT to prohibit the possession or distribution of certain photographs and other visual representations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Possession or distribution of certain photographs or other visual representations prohibited - Penalty. A person is guilty of a class A misdemeanor if, knowing of its character and content, a person surreptitiously acquires and knowingly possesses or distributes any photograph or other visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, without the individual's written consent. If the photograph or other visual representation is of a minor and possession does not violate section 12.1-27.2-04.1, a parent of the minor may give permission for a person to possess or distribute the photograph or other visual representation. This section does not apply to any book, as defined in section 12.1-27.1-03.1, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by a licensed attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that person's scope of employment.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 128

HOUSE BILL NO. 1062
(Representatives Carlisle, Henegar)

SENTENCING

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to mandatory terms of imprisonment; to amend and reenact subsection 10 of section 12.1-32-02, sections 12.1-32-02.1, 19-03.1-23, and subsection 12 of section 54-23.3-04 of the North Dakota Century Code, relating to sentencing alternatives, prison terms for certain offenders, penalties for unlawful manufacture, delivery, or possession of controlled substances, and authority to contract with other governmental agencies for prisoners and juvenile delinquents; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 12.1-32-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence. This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. ~~Minimum~~ Mandatory prison terms for armed offenders. Notwithstanding any other ~~provisions~~ provision of this title, ~~minimum terms~~ a term of imprisonment ~~shall~~ must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, ~~he~~ the offender inflicts or attempts to inflict bodily injury upon another, ~~or~~ threatens or menaces another with imminent bodily injury with a dangerous weapon, ~~an~~ explosive, destructive device, or ~~a~~ firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 or 2 of section 19-03.1-23. ~~Such minimum penalties shall apply~~ This requirement applies only when possession of a dangerous weapon, ~~an~~ explosive, destructive device, or ~~a~~ firearm has been charged and admitted or found to be true in the manner provided by law, and ~~shall~~ must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

SECTION 3. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - **Penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance~~; provided, that~~, but any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:

   a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:

      (1) For a first offense, to imprisonment for at least a year and a day.

      (2) For a second offense, to imprisonment for at least five years.

      (3) For a third or subsequent offense, to imprisonment for twenty years.

   b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:

      (1) For a first offense, to imprisonment for at least eight months.

      (2) For a second offense, to imprisonment for at least three years.

      (3) For a third or subsequent offense, to imprisonment for ten years.

   c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:

      (1) For a second offense, to imprisonment for at least six months.

      (2) For a third offense, to imprisonment for at least one year.

      (3) For a fourth or subsequent offense, to imprisonment for five years.

   d. A substance classified in schedule V, is guilty of a class A misdemeanor.

2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance~~; provided, that~~, but any

person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:

a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.

b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.

c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.

3. In addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufacturers, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:

   a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.

   b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.

4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance except marijuana is guilty of a class B felony and must be sentenced:

   a. For the first offense, to imprisonment for at least four years.

   b. For a second or subsequent offense, to imprisonment for at least five years.

   c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed

while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.

6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of ~~his~~ the practitioner's professional practice, or except as otherwise authorized by this chapter~~; provided, that~~, but any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. ~~Any~~ Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony~~; except that any~~. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor~~; and any~~. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.

~~4.~~ 8. Notwithstanding ~~the provisions of~~ section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 4. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Mandatory terms of imprisonment - Deferred or suspended sentence limited. Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

SECTION 5. AMENDMENT. Subsection 12 of section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. To contract for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency. The director shall reimburse the entity at an amount based upon the services required for the housing and treatment of inmates. The director may also contract to provide services, without cost to the state, for persons held by any of the jurisdictions mentioned in this section. ~~An adult inmate considered for transfer to another jurisdiction who does not consent to the transfer or a juvenile delinquent considered for transfer to another jurisdiction whose parent or guardian does not consent to the transfer must be given notice of the pending transfer and a review of the proposed transfer to determine the need and justification for the transfer by a board consisting of an institutional staff member, a security or housing staff member, a member of the administrative staff, and a chairman who is designated by the director of corrections. The findings of the review board must be given to the adult inmate or in the case of a juvenile delinquent, the parent or guardian. In addition, in the case of an adult inmate, the findings must be presented to the pardon board, and in the case of a juvenile, to the designated juvenile court for approval of the requested transfer.~~ If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of the department of corrections and rehabilitation, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $1,890, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of this Act for the period beginning July 1, 1994, and ending June 30, 1995.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on July 1, 1994.

Approved April 8, 1993
Filed April 8, 1993

CHAPTER 129

SENATE BILL NO. 2042
(Legislative Council)
(Interim Judiciary Committee)

SEX OFFENDER REPORTS

AN ACT to create and enact two new subsections to section 12.1-32-02 and a new subsection to section 54-23.3-04 of the North Dakota Century Code, relating to presentence reports in certain felony cases; to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration requirements for individuals convicted of crimes against children and individuals convicted of sexual offenses; to repeal sections 12.1-20-18, 12.1-20-19, 12.1-20-20, 12.1-20-21, 12.1-20-22, and 12.1-20-23 of the North Dakota Century Code, relating to the registration of individuals convicted of sexual offenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-32-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.

SECTION 2. A new subsection to section 12.1-32-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Before sentencing a defendant on a felony charge under sections 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report.

SECTION 3. AMENDMENT. Section 12.1-32-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. ~~Crimes~~ Offenders against children and sexual offenders **- Registration requirement - Penalty.**

1. As used in this section~~,~~:

   a. "~~a~~ A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, ~~12.1-20,~~ 12.1-27.2, or 12.1-29 in which the victim

is a minor or is otherwise of the age required for the act to be a crime.

b. "Department" means the department of corrections and rehabilitation.

c. "Sexual offender" means a person who has been convicted of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11.

2. After a person has been convicted of a crime against a child or an attempted crime against a child, the court may impose, or after a person has been convicted as a sexual offender, the court ~~may~~ shall impose, in addition to any other penalty provided by law, a requirement that the person register, within thirty days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court ~~may not~~ shall require a person to register ~~unless the court states~~ by stating this ~~fact~~ requirement on the court records.

3. ~~If~~ When the court has imposed ~~a~~ the requirement for registration under this section, the official in charge of a facility or institution where the person required to register is confined, or the department, shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official or the department shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement, or the department, shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.

4. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.

5. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in name or address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new name or address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

6. A person required to register under this section shall comply with the registration requirement for a period of ten years after conviction or after release from incarceration, whichever is later, except that for violations of section 12.1-17-01, 12.1-17-02, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-18-03, 12.1-20-05, or 12.1-20-07, the person shall comply with the registration requirement for a period of five years after conviction or after release from incarceration, whichever is later.

7. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year.

8. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole ~~or probation~~, of the person revoked. The statements, photographs, and fingerprints required by this section are ~~not~~ open to inspection by the public ~~or by any person other than a regularly employed law enforcement officer~~.

9. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.

SECTION 4. A new subsection to section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To collect the costs of any presentence investigation and report incurred under section 1 of this Act, giving due consideration to the financial obligations and resources of the defendant.

SECTION 5. REPEAL. Sections 12.1-20-18, 12.1-20-19, 12.1-20-20, 12.1-20-21, 12.1-20-22, and 12.1-20-23 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 6. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 1994.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 130

HOUSE BILL NO. 1044
(Legislative Council)
(Interim Judiciary Committee)

PROBATIONER FIREARM POSSESSION

AN ACT to amend and reenact sections 12.1-32-07 and 12.1-32-14 of the North Dakota Century Code, relating to a prohibition on possession of a firearm as a condition of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In all other cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party selected by the court.

2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

   a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment.

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[1] NOTE: Section 12.1-32-07 was also amended by sections 2 and 3 of House Bill No. 1078, chapter 132; by section 3 of Senate Bill No. 2150, chapter 114; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

d. Support the defendant's dependents and meet other family responsibilities.

e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in section 12.1-32-08.

f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.

g. ~~Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer.~~

~~h.~~ Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.

~~i.~~ h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.

~~j.~~ i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.

~~k.~~ j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

~~l.~~ k. Report to a probation officer at reasonable times as directed by the court or the probation officer.

~~m.~~ l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.

~~n.~~ m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.

~~o.~~ n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.

~~p.~~ o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.

~~q.~~ p. Pay a probation supervision cost, if doing so will not materially interfere with other financial obligations.

~~4.~~ 5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.

~~5.~~ 6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time ~~prior to~~ before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

~~6.~~ 7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

~~7.~~ 8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

SECTION 2. AMENDMENT. Section 12.1-32-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-14. Restoration of property or other work to be required of certain offenders. Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief ~~shall be~~ is placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection ~~3~~ 4 of section 12.1-32-07.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 131

SENATE BILL NO. 2144
(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

CORRECTIONAL SUPERVISION AND FEES

AN ACT to create and enact two new subsections to section 54-23.3-04 of the North Dakota Century Code, relating to the authority of the director of the department of corrections and rehabilitation to accept forfeited or seized property and to collect fees from persons on correctional supervision; to amend and reenact subsection 2 of section 12.1-32-07 and subdivision q of subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to the supervision of a probationer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 2 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship.

[2] **SECTION 2. AMENDMENT.** Subdivision q of subsection 3 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

q. ~~Pay a probation supervision cost, if doing so will not materially interfere with other financial obligations.~~ Undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation.

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[1] NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by sections 1 and 2 of House Bill No. 1078, chapter 132; and by section 3 of Senate Bill No. 2150, chapter 114.

[2] NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by sections 1 and 2 of House Bill No. 1078, chapter 132; and by section 3 of Senate Bill No. 2150, chapter 114.

SECTION 3. Two new subsections to section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

To accept property forfeited or seized in accordance with law.

To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination.

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

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 132

HOUSE BILL NO. 1078
(Judiciary Committee)
(At the request of the Supreme Court)

INDIGENT DEFENSE COST AS PROBATION CONDITION

AN ACT to create and enact a new subdivision to subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to conditions of probation; to amend and reenact subdivision e of subsection 3 of section 12.1-32-07, sections 12.1-32-08, and 29-07-01.1 of the North Dakota Century Code, relating to conditions of probation and reimbursement of indigent defense costs and expenses; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subdivision e of subsection 3 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.

[2] **SECTION 2.** A new subdivision to subsection 3 of section 12.1-32-07 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 3 of section 12.1-32-08.

SECTION 3. AMENDMENT. Section 12.1-32-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-08. Hearing prior to ordering restitution ~~or~~, reparation ~~order~~, or reimbursement of indigent defense costs and expenses - Conditions.

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[1] NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by section 3 of Senate Bill No. 2150, chapter 114; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

[2] NOTE: Section 12.1-32-07 was also amended by section 1 of House Bill No. 1044, chapter 130; by section 3 of Senate Bill No. 2150, chapter 114; and by sections 1 and 2 of Senate Bill No. 2144, chapter 131.

1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. The court, when sentencing a person adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution the court shall take into account:

   a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages must be limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.

   b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.

   c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

   The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation must, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

3. a. Prior to imposing reimbursement of indigent defense costs and expenses as a condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney, the defendant, and the defendant's probation officer concerning the nature and amount of costs and expenses to be reimbursed. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus

reasonable expenses. The court may not impose reimbursement of indigent defense costs and expenses as a condition of probation unless the court finds the defendant is or may be able to pay them. In determining the amount and method of reimbursement, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 5 or 6, as applicable, of section 12.1-32-07.

SECTION 4. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses.

1. Lawyers appointed to represent needy persons must be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, must be paid by the county ~~wherein~~ in which the alleged offense took place if the action is prosecuted in county court, by the state if the action is prosecuted in district court, and by the city ~~wherein~~ in which the alleged offense took place if the action is prosecuted in municipal court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 9 of section 27-07.1-17. The city shall also pay the expenses in any appeal taken to district court or county court from a judgment of conviction in municipal court pursuant to section 40-18-19.

2. A defendant with appointed counsel, subject to subdivisions a through c of this subsection, shall reimburse the county, state, or city such sums as the county, state, or city expends on the defendant's behalf~~, unless otherwise ordered by the court~~.

   a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.

   b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent

defense costs and expenses the defendant is obligated to reimburse if able to do so. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus reasonable expenses. Following receipt of notice under this subdivision, the defendant is entitled to a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The state's attorney of the county or prosecuting attorney of the city ~~wherein~~ in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any ~~such sums~~ amounts expended on the defendant's behalf any time the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the county, state, or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.

SECTION 5. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code as amended by section 110 of chapter 326 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses.

1. Lawyers appointed to represent needy persons ~~shall~~ must be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, ~~shall~~ must be paid by the state if the action is prosecuted in district court, and by the city ~~wherein~~ in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19.

2. A defendant with appointed counsel, subject to subdivisions a through c of this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf~~, unless otherwise ordered by the court~~.

a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.

b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses the defendant is obligated to reimburse if able to do so. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of fifty dollars per hour for appointed counsel services plus reasonable expenses. Following receipt of notice under this subdivision, the defendant is entitled to a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.

c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The state's attorney of the county or prosecuting attorney of the city ~~wherein~~ in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any ~~such sums~~ amounts expended on the defendant's behalf any time the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.

SECTION 6. EFFECTIVE DATE. Section 5 of this Act becomes effective on January 2, 1995.

SECTION 7. EXPIRATION DATE. Section 4 of this Act is effective through January 1, 1995, and after that date is ineffective.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 133

SENATE BILL NO. 2298
(Senators Maxson, Sand, W. Stenehjem)
(Representatives Kretschmar, Maragos, Wanzek)

CUSTODIAL RELEASE NOTICE

AN ACT to create and enact a new subsection to section 25-03.1-43 of the North Dakota Century Code, relating to confidential records and the notification of crime victims; and to amend and reenact subsection 16 of section 12.1-34-02 of the North Dakota Century Code, relating to fair treatment standards for victims and witnesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 16 of section 12.1-34-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. Prompt notice of custodial release. Victims and witnesses must be informed by the appropriate custodial authority whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Notification must include the transfer of the defendant to a work-release program, a community residential program, or transfer to a mental health facility. All notices to the victim and witnesses concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.

SECTION 2. A new subsection to section 25-03.1-43 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Victims and witnesses of a crime to the extent necessary to comply with the notification requirements of subsection 16 of section 12.1-34-02.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 134

SENATE BILL NO. 2540
(Senators Mathern, Freborg)
(Representatives Clayburgh, Kerzman)
(Approved by the Delayed Bills Committee)

MINOR VICTIM OR WITNESS TESTIMONY

AN ACT to create and enact three new sections to chapter 12.1-35 and a new subsection to section 12.1-35-02 of the North Dakota Century Code, relating to testimony and proceedings involving a witness or victim who is a minor; and to amend and reenact sections 12.1-35-01 and 12.1-35-04 of the North Dakota Century Code, relating to victim and witness standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-35-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.

2. "Child development specialist" means an individual who demonstrates educational and work experience exhibiting an understanding of child development and behavior.

3. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.

~~3.~~ 4. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.

~~4.~~ 5. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.

~~5.~~ 6. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.

~~6.~~ 7. "Victim" means a child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.

~~7.~~ 8. "Witness" means any child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

SECTION 2. A new subsection to section 12.1-35-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Information about the availability of a child development specialist to ensure questions asked of the witness are chronologically and developmentally appropriate.

SECTION 3. AMENDMENT. Section 12.1-35-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-04. Limits on interviews. The prosecuting attorney and appropriate law enforcement personnel shall, to the extent possible, protect the ~~child~~ victim or ~~child~~ witness from the psychological damage of repeated or lengthy interrogation or discovery proceedings while preserving the rights of the public, the victim, and the person charged with the violation.

SECTION 4. Three new sections to chapter 12.1-35 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

Assistance during proceedings. Upon request of a witness who is under the age of fourteen, the court shall permit an individual selected by the court to sit with, accompany, or be in close proximity to the witness in order to provide support to the witness while that witness is giving testimony. In order to provide support to a witness who is fourteen years of age or older, while that witness is giving testimony, the court may permit an individual selected by the court to sit with, accompany, or be in close proximity to that witness.

Confidentiality of testimony. In any criminal proceeding in which the defendant is charged with a violation of chapter 12.1-20 involving a child, the court, upon the motion of the prosecuting attorney, shall conduct a hearing to determine whether the testimony of and relating to a child may be closed to the public in order to protect the child's reputation. In making the determination to close the proceedings, the court shall consider:

1. The nature and seriousness of the offense;
2. The age of the child;
3. The extent to which the size of the community would preclude the anonymity of the victim;
4. The likelihood of public opprobrium due to the status of the victim;
5. Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during the proceeding and that the disclosure would cause serious harm to the witness;
6. Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means; and
7. Any other factor the court may find necessary to protect the interests of justice.

Application to discovery proceedings. This chapter applies to any criminal proceeding, including a deposition or other discovery proceeding.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 135

HOUSE BILL NO. 1047
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

CRIME VICTIMS PROGRAM TRANSFER

AN ACT to transfer the administration of crime victims reparations program from the workers compensation bureau to the division of adult services of the department of corrections and rehabilitation; to amend and reenact subsection 5 of section 12.1-34-02, subsection 1 of section 27-20-51, sections 27-20-52, 28-22-19, and subdivision m of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the crime victims reparations program; and to repeal chapter 65-13 of the North Dakota Century Code, relating to the crime victims reparations program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 18 of this Act, unless the context or subject matter otherwise requires:

1. "Bodily injury" means any harm that requires medical treatment and results in economic loss and includes pregnancy and nervous shock.

2. "Claimant" means a victim, a dependent of a deceased victim, or a representative of either, who claims reparations under sections 1 through 18 of this Act.

3. "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under sections 1 through 18 of this Act which the claimant has received, or which is readily available to the claimant. Social service benefits are not a collateral source unless the claimant was receiving those benefits prior to the injury.

4. "Criminally injurious conduct" means conduct that occurs in or outside this state, results in bodily injury or death, and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime under the laws of this state. The term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death or when the division determines that the conduct arose out of the use of intoxicating liquor or controlled substances as provided in section 39-08-01 or the conduct was followed by failure to stop or to give information and render aid as provided in sections 39-08-04 and 39-08-06.

5. "Dependent" means a natural person wholly or partially dependent upon a victim for care or support and includes a child of a victim born after the victim's death.

6. "Division" means the division of adult services of the department of corrections and rehabilitation.

7. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.

   a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of one thousand five hundred dollars for expenses in any way related to funeral, cremation, and burial. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless the excess represents costs of other accommodations that are medically required.

   b. "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to a victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death.

   c. "Dependent's replacement services loss" means loss reasonably incurred by a dependent after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for the dependent's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

   d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.

   e. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of the victim or the victim's family, if the victim had not been injured.

   f. "Work loss" means loss of income from work the victim would have performed if the victim had not been injured, and expenses reasonably incurred by the victim in obtaining services in lieu of those the victim would have performed for income, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.

8. "Victim" means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any

person to apprehend a person suspected of engaging in criminally injurious conduct. The term does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

SECTION 2. Award of reparations. The division shall award reparations for economic loss arising directly from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

SECTION 3. No award paid to inmates. The division may not make an award of any kind under sections 1 through 18 of this Act to a victim convicted of a crime and injured while confined in any state, county, or city jail, prison, or other correctional facility.

SECTION 4. Powers and duties of the division.

1. In addition to its other powers and duties, the division shall:

   a. Establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe the duties and compensation of the employees and agents.

   b. Adopt and enforce rules necessary to implement sections 1 through 18 of this Act. All fees on claims for legal, medical, mental health, and hospital services, and the manner in which economic loss benefits are calculated, must be in accordance with the schedules of fees adopted by the division.

   c. Prescribe forms for applications for reparations.

   d. The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.

   e. Publicize widely the availability of reparations and information regarding the filing of reparations claims.

2. The division may:

   a. Request from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether, and the extent to which, a claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under sections 1 through 18 of this Act.

   b. Take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge.

SECTION 5. Gifts, grants, and bequests - Gift fund. The division may accept on behalf of the state all gifts, grants, or bequests of property tendered to the state for any purpose pertaining to the activities of the division in implementing sections 1 through 18 of this Act. The crime victims gift fund is established as a special fund in the state treasury. All gifts, grants, and bequests of property or

money, and any interest occurring thereon, must be placed in the crime victims gift fund. Subject to legislative appropriation, the fund may be used and disbursed by the division in accordance with the terms of the donation or, if there are no terms, for costs and expenses incurred by the division in the implementation of sections 1 through 18 of this Act.

SECTION 6. Application for reparations - Awards - Limitations on awards.

1. An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the division.

2. A claim for reparations must be filed within one year after the date of injury or death. When the division cannot determine with certainty the date of injury, then the date of injury is the first date that a reasonable person should have known that the injury resulted from criminally injurious conduct. The division may extend the time for filing when it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.

3. Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.

4. Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the division finds there was good cause for the failure to report within that time.

5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of reparations.

6. Reparations otherwise payable to a claimant must be reduced or denied:

   a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources;

   b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf reparations are claimed; and

   c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.

7. Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed three hundred dollars per week.

8. Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate.

SECTION 7. Informal hearing - Rehearing. After an informal hearing on the papers submitted, at which the claimant need not be present, the division may accept, deny, or reduce a claim or set it for rehearing. If a claim is reduced or denied by the division, the claimant may request a rehearing or appeal the decision. The claimant must be notified of the right to rehearing or appeal.

SECTION 8. Evidence of physical condition.

1. There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the victim in a proceeding under sections 1 through 18 of this Act in which that condition is an element.

2. If the mental, physical, or emotional condition of a claimant is material to a claim, the division may order the claimant to submit to a mental or physical examination by a doctor or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order must specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and must require the person who performs the examination to file with the division a detailed written report of the examination or autopsy. The report must set out the examining person's findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

3. On request of the person examined, the division shall furnish that person with a copy of the examination report. If a deceased victim is autopsied, the division, on request, shall furnish the claimant a copy of the autopsy report.

4. The division may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

SECTION 9. Enforcement of division's orders. If a person refuses to comply with an order under sections 1 through 18 of this Act or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the division may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the division may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a medical or physical examination.

SECTION 10. Award and payment of reparations.

1. An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

2. The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under section 14 of this Act.

SECTION 11. Attorney's fees. As part of an order, the division shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous or that the appeal was unsuccessful. Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in addition to an award of reparations and may be made whether or not reparations are awarded. No attorney may contract for or receive any larger sum than the amount allowed.

SECTION 12. Subrogation - Actions - Allocation of expenses.

1. If reparations are awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source that is, or, if readily available to the claimant, would be, a collateral source.

2. As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the division prior written notice of the proposed action. After receiving the notice, the division shall promptly:

   a. Join in the action as a party plaintiff to recover reparations awarded;

   b. Require the claimant to bring the action in the claimant's individual name, as a trustee in behalf of the state, to recover reparations awarded; or

   c. Reserve its rights and do neither in the proposed action.

   If, as requested by the division, the claimant brings the action as trustee and recovers reparations awarded by the division, the claimant may deduct from the reparations recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment must be allocated between them in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

SECTION 13. Manner of payment - Nonassignability and exemptions.

1. The division may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award must be paid in a lump sum. An award for

allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection 2, the part of an award that may not be paid in a lump sum must be paid in installments.

2. At the request of the claimant, the division may commute future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the division that:

   a. The award in a lump sum will promote the interests of the claimant; or

   b. The present value of all future economic loss other than allowable expense, does not exceed one thousand dollars.

3. An award for future economic loss payable in installments may be made only for a period as to which the division can reasonably determine future economic loss. The division may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.

4. An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except:

   a. An assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or

   b. An assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

5. No funds may be placed in reserve by the division on any claim.

SECTION 14. Tentative awards. If the division determines that the claimant will suffer financial hardship unless a tentative award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant which must be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

SECTION 15. Reconsideration and review of decisions.

1. The division, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

2. The right of reconsideration does not affect the finality of a decision of the division for the purpose of judicial review.

SECTION 16. Reports. The division shall prepare and transmit biennially to the governor and the legislative assembly a report of its activities, including a brief description of the facts, the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

SECTION 17. Confidentiality of records. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives of the parties in proceedings before the division and must be sealed at the conclusion of the proceedings. All other records of the division concerning the application for or award of reparations under this chapter are confidential and are not open to public disclosure. Inspection of these records, however, must be permitted by:

1. Law enforcement officers when necessary for the discharge of their official duties.

2. Representatives of a claimant, whether an individual or an organization, who may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.

3. Physicians or health care providers treating or examining persons claiming benefits under this title, or physicians giving medical advice to the division regarding any claim, at the discretion of the division.

4. Any person who is rendering assistance to the division at any stage of the proceedings on any matter pertaining to the administration of sections 1 through 18 of this Act.

5. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives in proceedings before the division and must be sealed at the conclusion of the proceedings.

SECTION 18. Filing false claim or false statements - Penalty. Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor. In addition to any other penalties provided by law, the claimant who violates this section forfeits any compensation paid under sections 1 through 18 of this Act and must reimburse the program for any benefits paid.

SECTION 19. AMENDMENT. Subsection 5 of section 12.1-34-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hot lines, social service agencies, and domestic violence programs. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of ~~the Crime Victims Reparations Act as provided in chapter 65-13~~ sections 1 through 18 of this Act.

SECTION 20. AMENDMENT. Subsection 1 of section 27-20-51 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are confidential and may not be

disclosed to the public. Such files and records are open to inspection only by:

a. The judge and staff of the juvenile court.

b. The parties to the proceeding or their counsel or guardian ad litem of any party.

c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.

d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court.

e. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to ~~chapter 65-13~~ sections 1 through 18 of this Act.

SECTION 21. AMENDMENT. Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement records. Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection or their contents disclosed to the public; but inspection of the records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;

2. Counsel for a party to the proceeding;

3. The officers of public institutions or agencies to whom the child is committed;

4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;

5. A court in which he is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole or pardon board in considering his parole or discharge or in exercising supervision over him; and

6. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to ~~chapter 65-13~~ sections 1 through 18 of this Act.

SECTION 22. AMENDMENT. Section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.

2. All awards made pursuant to ~~chapter 65-13~~ sections 1 through 18 of this Act as reparations for victims of crimes.

3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

[1] **SECTION 23. AMENDMENT.** Subdivision m of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under sections 1 through 18 of this Act.

SECTION 24. REPEAL. Chapter 65-13 of the North Dakota Century Code is repealed.

Approved March 11, 1993
Filed March 12, 1993

[1] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1193, 1264, 1336, and 1400 and Senate Bill Nos. 2215 and 2228, chapters 186, 328, 327, 80, 173, and 236.

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 136

HOUSE BILL NO. 1172
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

MONEY BROKER ADVANCE FEES

AN ACT to create and enact a new section to chapter 13-04.1 of the North Dakota Century Code, relating to advance fees by money brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

Advance fees prohibited - Exception. No money broker may take any type of fee in advance before the funding of the loan, unless the money broker is licensed under this chapter.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 137

SENATE BILL NO. 2208
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

INTERSTATE COLLECTION ACTIVITIES

AN ACT to amend and reenact section 13-05-02 of the North Dakota Century Code, relating to out-of-state persons or agencies collecting from individuals living in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-05-02 of the North Dakota Century Code is amended and reenacted as follows:

13-05-02. Collection agency license required to collect claims. Except as otherwise herein provided, no person other than a collection agency licensed and authorized under this chapter may advertise or solicit either in print, by letter, in person, or otherwise, the right to collect or receive payment of any claim for another or sell or give away collection letters as demand forms in the state of North Dakota. As used in this chapter, the term "collection agency" does not include attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of creditman upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court. A person may not be considered to be engaged in collection activity within this state if that person's activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and the state has enacted similar legislation.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 138

HOUSE BILL NO. 1176
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

COLLECTION AGENCY CEASE AND DESIST AND PENALTIES

AN ACT to create and enact two new subsections to section 13-05-06 of the North Dakota Century Code, relating to department of banking and financial institutions' cease and desist authority and assessment of civil money penalties involving collection agency activity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 13-05-06 of the North Dakota Century Code are created and enacted as follows:

Issue and serve upon any person, or licensed collection agency, an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.

Impose civil money penalties against persons or agencies willfully violating an order to cease and desist in an amount not to exceed five hundred dollars for each violation. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the assessment of civil money penalties. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 139

SENATE BILL NO. 2362
(Senators Nalewaja, Mathern, Krebsbach)
(Representatives R. Berg, Boucher, Porter)

CONSUMER CREDIT COUNSELING SERVICES

AN ACT relating to consumer credit counseling services; and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Consumer credit counseling service - Definition. As used in this Act, "consumer credit counseling service" means a nonprofit corporation engaged in the business of debt adjusting as defined in section 13-06-01.

SECTION 2. Consumer credit counseling service - Contract requirements. Any agreement between a consumer credit counseling service and a debtor for counseling and assistance must be in writing and signed by both parties. The consumer credit counseling service shall give the debtor a copy of the signed agreement. The agreement must disclose the total amount that may be retained by the consumer credit counseling service if the contract is fully performed, the terms upon which the debtor may cancel the contract, and all debts that are to be managed by the counseling service, including the name of each creditor and the amount of each debt. A consumer credit counseling service may not enter an agreement with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and that the debtor will be benefited by the plan.

SECTION 3. Consumer credit counseling service - Surety bond or other security. A consumer credit counseling service entering an agreement with a debtor who resides in this state shall file with the attorney general a surety bond or other security in an amount equal to the largest sum accrued in the service's trust account during the prior year, or five thousand dollars, whichever is greater. The bond or other security must be payable to the state of North Dakota and must be acceptable to the attorney general for the use and benefit of debtors making payments to a consumer credit counseling service and suffering damages caused by the consumer credit counseling service.

SECTION 4. Consumer credit counseling service - Trust accounts. A consumer credit counseling service shall deposit in a trust account in a financial institution, within one business day of receipt, any payments received from or on behalf of a debtor. A debtor's payments must be identifiable in the trust account. Funds in the trust account may not be commingled with any other funds. The consumer credit counseling service shall credit any interest accrued as a result of payments deposited in a trust account to debt management education programs.

SECTION 5. Consumer credit counseling service - Accounting records - Availability of statements. A consumer credit counseling service shall maintain books, records, and accounts in a manner that allows the attorney general to determine compliance with the law. A consumer credit counseling service shall prepare a weekly statement of all receipts and disbursements, including payments

received from or on behalf of a debtor, disbursements made on behalf of the debtor, fees collected, and funds held in escrow. The consumer credit counseling service shall make available to each debtor, upon request, a copy of the debtor's statement of account. All books, records, and accounts must be retained by a consumer credit counseling service for at least six years after the final entry of any recorded transaction.

SECTION 6. Fees - Payments - Cancellation. A consumer credit counseling service may charge an origination fee of up to fifty dollars, which may be subtracted from the intital amount paid by the debtor to the counseling service. The consumer credit counseling service may withdraw and retain as partial payment of the service's total fee up to fifteen percent of any sum deposited by the debtor for distribution. The remainder must be disbursed to the listed creditors in accordance with the parties' agreement. Disbursement must be made within forty-five days after deposit by the debtor. Before an automatic termination, either party may cancel the agreement without cause upon giving to the other party thirty days' written notice of an intent to cancel. In the event of a cancellation, the consumer credit counseling service shall notify the debtor's creditors within thirty days.

SECTION 7. Prohibitions - Investigation - Civil penalty. A consumer credit counseling service may not take a confession of judgment or a power of attorney to confess judgment against the debtor, or appear as the debtor in any judicial proceeding. The attorney general may, upon the attorney general's own motion, and shall, upon receipt of a complaint, investigate any alleged violation of law by a consumer credit counseling service. For that purpose, the attorney general may subpoena witnesses, administer oaths, take testimony, and require the production of books, documents, and other records. The attorney general may institute a civil action in the name of the state in the district court for an injunction prohibiting any practice in violation of this Act. The court, upon notice to the defendant of not less than five days, and upon proof that the defendant has engaged in a practice in violation of this Act may enjoin the defendant from engaging in any practice in violation of this Act. In addition, the court may impose a civil penalty not to exceed five thousand dollars for each violation of this Act. The attorney general may recover costs and disbursements, including the costs of investigation and reasonable attorney's fees.

Approved April 15, 1993
Filed April 15, 1993

DOMESTIC RELATIONS AND PERSONS

CHAPTER 140

SENATE BILL NO. 2367
(Senators Maxson, W. Stenehjem, Holmberg)
(Representatives Maragos, Porter, Kaldor)

EMPLOYMENT DISCRIMINATION

AN ACT to amend and reenact sections 14-02.4-01, 14-02.4-03, 14-02.4-06, and 14-02.4-08 of the North Dakota Century Code, relating to discriminatory practices in employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-01 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-01. State policy against discrimination. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.

SECTION 2. AMENDMENT. Section 14-02.4-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-03. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least ~~twenty-seven~~ forty-four thousand dollars.

SECTION 3. AMENDMENT. Section 14-02.4-06 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-06. Certain employment advertising deemed discriminatory. It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

SECTION 4. AMENDMENT. Section 14-02.4-08 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental handicap, or marital status. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental handicap, or marital status in those circumstances where religion, sex, national origin, physical or mental handicap, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours and which is not in direct conflict with the essential business-related interests of the employer, if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 141

SENATE BILL NO. 2286
(Senators Lindgren, Heinrich)
(Representative Oban)

MARRIAGE OF SEVERELY RETARDED

AN ACT to repeal section 14-03-07 of the North Dakota Century Code, relating to prohibited marriages of persons institutionalized as severely retarded.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 14-03-07 of the North Dakota Century Code is repealed.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 142

HOUSE BILL NO. 1105
(Political Subdivisions Committee)
(At the request of the Supreme Court)

CLERK OF DISTRICT COURT

AN ACT to amend and reenact sections 14-03-09, 16.1-15-08, 16.1-15-09, 16.1-15-11, 16.1-15-13, and 16.1-16-07 of the North Dakota Century Code, relating to the authority of clerks of district court to solemnize marriages and the duties of clerks of district court to preserve election ballots; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-09 of the North Dakota Century Code is amended and reenacted as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by ~~magistrates appointed and assigned under section 27-07.1-07~~ clerks of district court, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

SECTION 2. AMENDMENT. Section 14-03-09 of the North Dakota Century Code, as amended by section 43 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by ~~magistrates appointed by the presiding judge of the judicial district~~ clerks of district court, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

SECTION 3. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to county judge or ~~magistrate~~ clerk of district court. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be folded tightly together and the wrapper must be pasted or glued securely at the outer end to

completely envelop and hold the ballots together. Ballots ~~which~~ that are void must be wrapped in a separate wrapper and must be marked "void". Ballots ~~which~~ that are spoiled must be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots must be kept separate. The judges shall fold all ballots counted by them, except those ~~which~~ that are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to the county judge or to the ~~magistrate for the county appointed and assigned under section 27-07.1-07~~ clerk of district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be wrapped, sealed, and returned as provided in this section.

SECTION 4. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code, as amended by section 54 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

[1] **16.1-15-08. Wrapping and returning of ballots to district judge or ~~magistrate~~** clerk of district court. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be folded tightly together and the wrapper must be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots ~~which~~ that are void must be wrapped in a separate wrapper and must be marked "void". Ballots ~~which~~ that are spoiled must be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots must be kept separate. The judges shall fold all ballots counted by them, except those ~~which~~ that are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to a district judge serving the county or to ~~a magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be wrapped, sealed, and returned as provided in this section.

SECTION 5. AMENDMENT. Section 16.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

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[1] NOTE: Section 16.1-15-08 was also amended by section 21 of Senate Bill No. 2361, chapter 201.

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots must have tabulating equipment ~~which~~ that has an element ~~which~~ that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element ~~which~~ that generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number ~~which~~ that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the county judge or to the ~~magistrate for the county appointed and assigned under section 27-07.1-07~~ clerk of district court.

SECTION 6. AMENDMENT. Section 16.1-15-09 of the North Dakota Century Code, as amended by section 55 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment ~~which~~ that has an element ~~which~~ that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element ~~which~~ that generates a printed

record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number ~~which~~ that must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the district judge or to ~~a magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court.

SECTION 7. AMENDMENT. Section 16.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to county judge or ~~magistrate~~ clerk of district court. Voting machines must remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine must be made by the inspector and the election judges at the time votes are tallied. This record must agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record must then be certified by the inspector and the election judges, and one copy must be delivered to the county judge or to the ~~magistrate of the county appointed and assigned under section 27-07.1-07~~ clerk of district court at the same time as the ballots are delivered to ~~him~~ the judge or clerk pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

SECTION 8. AMENDMENT. Section 16.1-15-11 of the North Dakota Century Code, as amended by section 56 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to district judge or ~~magistrate~~ clerk of district court. Voting machines must remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine must be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the district judge or to ~~a magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court at the same time as the ballots are

delivered to ~~him~~ the judge or clerk pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

SECTION 9. AMENDMENT. Section 16.1-15-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-13. County judge or ~~magistrate~~ clerk of district court to keep ballots forty-five days - Exception - Use of ballots as evidence. Immediately upon receiving the ballots as provided in section 16.1-15-08, the county judge or the ~~magistrate~~ clerk of district court shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes ~~which~~ that must be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the county judge or the ~~magistrate~~ clerk of district court that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the county judge or the ~~magistrate~~ clerk of district court as provided in this section must be received in evidence without introducing further foundation.

SECTION 10. AMENDMENT. Section 16.1-15-13 of the North Dakota Century Code, as amended by section 57 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

16.1-15-13. District judge or ~~magistrate~~ clerk of district court to keep ballots forty-five days - Exception - Use of ballots as evidence. Immediately upon receiving the ballots as provided in section 16.1-15-08, the district judge or the ~~magistrate~~ clerk of district court shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes ~~which~~ that shall be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the district judge or the ~~magistrate~~ clerk of district court that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the district judge or ~~a magistrate~~ clerk of district court as provided in this section must be received in evidence without introducing further foundation.

SECTION 11. AMENDMENT. Section 16.1-16-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county judge or to the ~~magistrate for the county appointed and assigned under section 27-07.1-07~~ clerk of district court of any county where ~~he~~ the contestant or contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county judge or the ~~magistrate~~ clerk of district court to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

SECTION 12. AMENDMENT. Section 16.1-16-07 of the North Dakota Century Code, as amended by section 58 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the district judge or to ~~a magistrate appointed by the presiding judge of the judicial district~~ the clerk of district court of any county where the contestant or the contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the district judge or the ~~magistrate~~ clerk of district court to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

SECTION 13. EFFECTIVE DATE. When sections 43, 54, 55, 56, 57, and 58 of chapter 326 of the 1991 Session Laws of North Dakota become effective, sections 2, 4, 6, 8, 10, and 12 of this Act become effective on January 2, 1995.

SECTION 14. EXPIRATION DATE. When sections 43, 54, 55, 56, 57, and 58 of chapter 326 of the 1991 Session Laws of North Dakota become effective, sections 1, 3, 5, 7, 9, and 11 of this Act are effective through January 1, 1995, and after that date are ineffective.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 143

HOUSE BILL NO. 1306
(Representatives J. Berg, Brodshaug, Gulleson, Wentz)
(Senators Evanson, Scherber)

MARRIAGE SURNAME NOTICE

AN ACT to amend and reenact sections 14-03-17 and 14-03-20 of the North Dakota Century Code, relating to names on marriage licenses and certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-17 of the North Dakota Century Code is amended and reenacted as follows:

14-03-17. Application for license.

1. When application is made to any county judge of this state for a marriage license, the judge shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. The judge may examine other witnesses upon oath. The facts relative to the legality of the marriage may be submitted to the county judge by affidavit. The county judge also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:

~~1.~~ a. An affidavit by each of the applicants showing that each is over the age of eighteen years. In addition, each applicant shall exhibit to the county judge a birth certificate or other satisfactory evidence of age. If either applicant is under the age of eighteen years, the county judge shall require the written consent under oath of:

~~a.~~ (1) Either parent of the minor applicant, if the parents are living together;

~~b.~~ (2) The parent having the legal custody of the minor applicant, if the parents are not living together;

~~c.~~ (3) The surviving parent, if one of the parents of the minor applicant is deceased; or

~~d.~~ (4) The guardian, or person under whose care and government the minor applicant is, if both parents of the minor applicant are deceased, or if a person other than a parent has legal and actual custody of the minor applicant.

~~2.~~ b. An affidavit showing whether or not either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application. A license shall not be issued if it contravenes any provisions of the decree of divorce.

2. All affidavits shall be subscribed and sworn to before a person authorized to administer oaths. The county judge shall retain on file in the judge's office all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section shall be punished as provided in section 14-03-28.

3. Each application for a marriage license must also contain a statement to the following effect:

NOTICE TO APPLICANTS

a. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.

b. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.

c. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space below. The entry must consist of one of the following surnames:

(1) The surname of the other spouse;

(2) Any former surname of either spouse;

(3) A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or

(4) A combination name separated by a hyphen, provided that each part of the combination surname is the premarriage surname or a former surname of either spouse.

d. Use of the option under subdivision c has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.

e. Neither the use of nor the failure to use the option of selecting a new surname by means of this application, as provided in subdivision c, abrogates the right of either party to adopt a different surname through usage at a future date.

(Optional -- Enter new surname above)

SECTION 2. AMENDMENT. Section 14-03-20 of the North Dakota Century Code is amended and reenacted as follows:

14-03-20. License and certificate. The marriage license and certificate of the person solemnizing the marriage must be upon one blank form in duplicate consisting of two pages with a perforated seam to make it readily detachable. The form must be substantially as follows:

MARRIAGE LICENSE

State of North Dakota,)
) ss.
County of _____)

To any person authorized by law to perform the marriage ceremony, greeting:

You are hereby authorized to join in marriage _____ of _____, aged _____ who has _____ been divorced, and _____ of _____, aged _____ who has _____ been divorced, and of this license and your certificate you will make due return to my office within five days.

Dated at _____ this _____ day of _____, 19__.

(Seal)

_____
County Judge

CERTIFICATE OF MARRIAGE

I hereby certify that the persons named in the foregoing license, _____ and _____, whose names after marriage are _____ and _____, respectively, were by me joined in marriage at _____, county of _____, State of North Dakota, on the _____ day of _____, 19____.

In the presence of

_____) _____
_____) _____
Witnesses

Every marriage license must contain the full name of each party before the marriage. Every certificate of marriage must contain the full name of each party before and after the marriage and be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 144

HOUSE BILL NO. 1393
(Representative Rydell)

CHILD CUSTODY DETERMINATIONS

AN ACT to amend and reenact section 14-05-22 and subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating to consideration of evidence of domestic violence by courts in determining rights to custody and visitation of children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-22 of the North Dakota Century Code is amended and reenacted as follows:

14-05-22. Custody of children - Visitation rights - Costs.

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.

2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.

3. ~~In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, this evidence creates the rebuttable presumption that awarding custody or granting visitation to the abusive party is not in the best interests of the child. The court shall furthermore give direction for the custody of children of the marriage and grant rights of visitation in a manner that best protects the children and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this section, "domestic violence" means domestic violence as defined in section 14-07.1-01. The court also shall consider the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent, and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.~~ If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and

convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.

4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.

5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-06.2 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

   a. The love, affection, and other emotional ties existing between the parents and child.

   b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.

   c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.

   d. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

   e. The permanence, as a family unit, of the existing or proposed custodial home.

   f. The moral fitness of the parents.

   g. The mental and physical health of the parents.

   h. The home, school, and community record of the child.

   i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

j. ~~The existence~~ Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, ~~the court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm~~ this evidence creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child requires that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01.

k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

l. Any other factors considered by the court to be relevant to a particular child custody dispute.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 145

SENATE BILL NO. 2306
(Senators Mushik, Thane)
(Representatives Kretschmar, Mahoney)

DOMESTIC RELATIONS INTERIM ORDERS

AN ACT to amend and reenact section 14-05-23 of the North Dakota Century Code, relating to interim orders in domestic relations cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

14-05-23. Temporary support, attorney fees, and custody. During any time in which an action for divorce is pending, the court, upon application of a party, may issue, ex parte, an order requiring a party to pay such support as may be necessary for the support of a party and ~~any~~ minor children of the parties and attorney fees ~~and awarding.~~ The court in the order may also award custody of ~~any~~ minor children to ~~any~~ a party. ~~Such orders~~ The order may be issued and served in accordance with ~~such rules as are promulgated and filed with the clerks of the district courts within the judicial district from time to time by the district judges of the judicial district~~ the North Dakota Rules of Court. The party to whom the order is directed has the right, upon motion, to have a hearing upon the necessity for ~~the~~ issuance of ~~such an~~ the order ~~or the~~ and any amounts to be paid~~, and unless such a~~. If the motion is not served and filed in the office of the clerk of the district court within five days after service of ~~an~~ the order ~~issued under the provisions of this section~~, the order is final and nonappealable pending a final determination of the issues raised by the pleadings or until further order of the court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order that is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 146

HOUSE BILL NO. 1427
(Representative Laughlin)

SUPPORT ORDER ENFORCEMENT

AN ACT to create and enact a new section to chapter 14-05 and a new section to chapter 14-06 of the North Dakota Century Code, relating to the enforcement of support orders arising out of decrees of divorce and decrees of separation from bed and board; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Enforcement of support order. Any order or judgment for the support of a spouse or former spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Any such order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse or former spouse must be treated as though it were an order for child support.

SECTION 2. A new section to chapter 14-06 of the North Dakota Century Code is created and enacted as follows:

Enforcement of support order. Any order or judgment for the support of a spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659] and not forbidden under title 32. Such an order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse must be treated as though it were an order for child support.

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

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 147

SENATE BILL NO. 2369
(Senator W. Stenehjem)

DOMESTIC VIOLENCE

AN ACT to amend and reenact subsection 3 of section 14-07.1-01, section 14-07.1-06, subdivision b of subsection 1 of section 14-07.1-11, and section 14-07.1-16 of the North Dakota Century Code, relating to the definition of a domestic violence program, eligibility for domestic violence prevention fund moneys, and arrest without warrant in domestic violence situations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 14-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~"Domestic violence program" means a program that provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:~~

   ~~a. Counseling.~~

   ~~b. Advocacy.~~

   ~~c. Community education on domestic violence.~~

   ~~d. Support groups.~~

   ~~e. Twenty-four-hour crisis lines.~~

   ~~f. Referral to other sources for services not provided by the domestic violence program.~~

   "Domestic violence organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence.

SECTION 2. AMENDMENT. Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

[1] **14-07.1-06. Penalty for violation of a protection order.** Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal

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[1] NOTE: Section 14-07.1-06 was also amended by section 4 of House Bill No. 1077, chapter 89.

contempt of court subject to penalties therefor. A second or subsequent violation of a protection order is a class C felony subject to the penalties therefor.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 14-07.1-11 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~The officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's family or household member as defined in section 14-07.1-01, although the assault did not take place in the presence of the officer.~~ From the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in section 14-07.1-01, the officer has four hours in which to make a warrantless arrest, whether or not the assault took place in the presence of the officer. After four hours has elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

SECTION 4. AMENDMENT. Section 14-07.1-16 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-16. Grants - Eligibility - Conditions - Limitation. The department shall administer moneys in the domestic violence prevention fund for grants to ~~private nonprofit~~ domestic violence organizations ~~that are engaged in providing emergency housing for victims of domestic violence and their dependents~~ as defined in section 14-07.1-01. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section. ~~No initial grant may exceed the amount of twenty thousand dollars per biennium, but any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.~~

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 148

HOUSE BILL NO. 1239
(Representatives Oban, Rydell, Kelsch)
(Senators Freborg, DeMers, Robinson)

DOMESTIC VIOLENCE RELEASE

AN ACT to create and enact a new subsection to section 14-07.1-10 of the North Dakota Century Code, relating to the release of an individual after an arrest for a crime involving domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 14-07.1-10 of the North Dakota Century Code is created and enacted as follows:

An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 149

SENATE BILL NO. 2368
(Senators W. Stenehjem, DeMers)

VIOLENCE AND SEXUAL ASSAULT RECORDS

AN ACT to amend and reenact section 14-07.1-18 of the North Dakota Century Code, relating to domestic violence or sexual assault program records; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-18 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-18. Domestic violence or sexual assault program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:

   a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;

   b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and

   c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.

2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:

   a. A client consents to the release of information that relates only to that client or the client's dependents;

   b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;

   c. A court of competent jurisdiction orders the disclosure <u>after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48</u>; or

d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

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

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 150

HOUSE BILL NO. 1462
(Representatives Mahoney, Dalrymple, Kelsch)
(Senators Maxson, Traynor)

GRANDPARENTAL VISITATION RIGHTS

AN ACT to amend and reenact section 14-09-05.1 of the North Dakota Century Code, relating to grandparental rights of visitation of unmarried minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-05.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-05.1. Grandparental rights of visitation to unmarried minors - Mediation or arbitration. The grandparents ~~and great-grandparents~~ of an unmarried minor ~~may~~ must be granted reasonable visitation rights and the great grandparents may be granted reasonable visitation rights to the minor ~~during the period of minority~~ by the district court upon application by the grandparents or great-grandparents unless a finding is made that visitation ~~would be~~ is not in the best interests of the minor ~~and would not interfere with the parent-child relationship~~. Visitation rights of grandparents to an unmarried minor are presumed to be in the best interest of the minor. The court shall consider the amount of personal contact that has occurred between the grandparents or great grandparents and the minor~~,~~ and the minor's parents~~, prior to the application~~. This section does not apply ~~if~~ to agency adoptions or when the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted ~~pursuant to~~ under this section ~~prior to~~ before the adoption of the minor ~~are automatically~~ may be terminated upon the adoption if termination of the rights is in the best interest of the minor. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state ~~has~~ retains jurisdiction over the custodial placement of the minor child or children ~~involved~~ by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights ~~must~~ may be brought against the custodial parent as a civil action and venued in the county of residence of the minor ~~children~~ child. ~~The custodial parent must be named as defendant. This section may not be construed to require joinder~~ The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights ~~if the joinder is not otherwise required~~.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 151

SENATE BILL NO. 2488
(Senators Holmberg, Evanson, Maxson)
(Representatives Kelsch, Mahoney)

CHILD CUSTODY ABUSE ALLEGATIONS

AN ACT to create and enact a new subdivision to subsection 1 of section 14-09-06.2 and a new section to chapter 14-09 of the North Dakota Century Code, relating to effect of allegations of child abuse or sexual abuse in child custody determinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 14-09-06.2 of the North Dakota Century Code is created and enacted as follows:

> The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Allegation of harm to child - Effect. If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 152

HOUSE BILL NO. 1181
(Human Services Committee)
(At the request of the Department of Human Services)

CHILD SUPPORT ENFORCEMENT

AN ACT to create and enact a new section to chapter 14-09, a new subsection to section 14-09-08.6, and a new section to chapter 50-09 of the North Dakota Century Code, relating to provisions for child support; to amend and reenact sections 14-09-08.1, 14-09-08.2, 14-09-08.3, subsection 3 of section 14-09-08.4, sections 14-09-08.5, 14-09-08.8, 14-09-08.11, 14-09-08.12, if House Bill No. 1021 of the fifty-third legislative assembly does not become effective, subsection 3 of section 14-09-09.7, sections 14-09-09.13, 14-09-09.16, 14-09-09.17, subsection 2 of section 14-12.1-19, section 14-12.1-24, subsection 1 of section 14-12.1-40, sections 14-17-09, 14-17-18, and 50-09-02.1 of the North Dakota Century Code and subsection 3 of section 16 of chapter 148 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 152 of the 1991 Session Laws of North Dakota, relating to provisions for child support; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Requests for information from income payor.

1. A child support agency or the public authority may mail a request for information to the income payor in any matter in which it secures reliable information that the income payor may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.

2. Within ten days after receipt of a request for information issued under subsection 1, an income payor shall provide the requestor with a written statement informing the requestor whether or not the income payor is, or within the thirty days immediately preceding receipt of the request has been, an income payor with respect to that obligor. If the income payor is, or within the previous thirty days has been, an income payor with respect to that obligor, the income payor shall furnish information to the requestor including:

   a. The amount of any income currently paid to the obligor, calculated on a monthly basis;

   b. The total amount of income paid to the obligor in the six months preceding the month in which the request is received;

   c. Information regarding any health insurance that may be made available to the obligor's children through the income payor;

d. The social security number under which payment of any income by the income payor to the obligor is reported;

e. The obligor's address; and

f. If the income payor is no longer an income payor with respect to that obligor, the date of last payment and any forwarding address.

3. Any income payor failing to comply with any requirements of this section may be punished by the court for civil contempt. The court shall first afford such income payor a reasonable opportunity to purge itself of contempt.

4. A proceeding against an income payor under this section may be commenced upon motion by a child support agency or the public authority and must be commenced within ninety days after the income payor's act or failure to act upon which such proceeding is based.

SECTION 2. AMENDMENT. Section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.1. Support payments - Payment to court - Transfer of payment to court of recipient's residence - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, for remittance to the obligee. The clerk shall remit the payments within ten working days of receipt unless the address of the obligee is unknown to the clerk. The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and any other information necessary for the proper administration of the order. Upon the filing with the clerk of court of notice of the assignment of support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651, et seq., as amended].

2. The parties subject to the order shall immediately inform the clerk of their social security numbers and of any change of address or change of any other condition which may affect the proper administration of this chapter.

3. Whenever there is failure to make the payments as required, the clerk shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.

~~2.~~ 4. The court of its own motion or on motion of the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in

the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, the provisions of this section apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

~~3.~~ 5. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.

SECTION 3. AMENDMENT. Section 14-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.2. Support for children after majority - Retroactive application.

1. ~~In the absence of a written agreement to the contrary entered into after July 1, 1989, a~~ A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:

   a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and

   b. The child resides with the person to whom the duty of support is owed.

2. The person to whom the duty of support is owed shall file an affidavit with the district court stating that the ~~child has been continuously enrolled in high school and is, or will be, eighteen years of age prior to the date the child is expected to be graduated~~ requirements of subsection 1 are met. The clerk of court shall serve the affidavit by first-class mail upon the person owing the duty of support. Upon the filing of the affidavit, the child support continues pursuant to subsection 1~~, unless~~. If the person owing the duty of support files a motion with the court, within twenty days subsequent to service of the affidavit, requesting a hearing before the district court, the court shall determine if the requirements of subsection 1 are met and shall enter an order accordingly.

3. This section applies to child support orders concerning children described in subsection 1, regardless of the date of entry of the order, provided that the affidavit described in subsection 2 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever comes first.

4. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree or if the court determines the support to be appropriate.

SECTION 4. AMENDMENT. Section 14-09-08.3 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.3. Duration of child support obligations. A Unless dates for the commencement or termination of a child support obligation are specified by the court's order, a judgment or order requiring the payment of child support ~~continues~~ is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates.

SECTION 5. AMENDMENT. Subsection 3 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

3. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

SECTION 6. AMENDMENT. Subsection 3 of section 16 of chapter 148 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 152 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

3. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

SECTION 7. AMENDMENT. Section 14-09-08.5 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.5. Notice of periodic review of child support orders.

1. The child support agency shall provide written notice that a child support order being enforced by the child support agency may be subject to review under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review.

2. The notice to the obligor must inform the obligor of the duty to furnish the information required by section 14-09-08.6 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by ~~a copy of the income withholding statutes and~~ an income report form, together with instructions for the accurate completion of the income report form.

SECTION 8. A new subsection to section 14-09-08.6 of the North Dakota Century Code is created and enacted as follows:

If an application to the court made pursuant to subsection 3 has not resulted in the production of information concerning the obligor's income sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified.

SECTION 9. AMENDMENT. Section 14-09-08.8 of the North Dakota Century Code is amended and reenacted as follows:

[1] **14-09-08.8. Motion for amendment of amount for child support - How made -** Presumption where obligor's income unknown.

1. Upon a determination by a child support agency, made under section 16 of chapter 148 of the 1989 Session Laws or section 14-09-08.4, that it must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.

2. The court may determine the motion based upon the files and records, and evidence received in consideration of the motion. If the child support agency certifies that, despite diligent efforts to secure reliable information concerning the obligor's income, the obligor has not produced such information, and if the obligor provides the court with no reliable evidence concerning the obligor's income, it is presumed that the obligor's income has increased at the rate of ten percent per year since the child support order was entered or last modified.

SECTION 10. AMENDMENT. Section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. Eligible child - Coverage to continue. A minor child that an obligor is required to cover as a beneficiary under section 14-09-08.10 is eligible for insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a minor child insured under an accident and health insurance policy or health service contract while the legal custody of the minor child has been given by the court to the obligee to the same extent as the general public is covered as long as the minor

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[1] NOTE: Section 14-09-08.8 was also amended by section 8 of House Bill No. 1002, chapter 2.

child meets all the other usual qualifications for insurability and payment continues on the policy or contract premiums. Insurance companies and nonprofit health service corporations licensed in this state shall provide coverage for minor children of an obligor who has been ordered to obtain dependent health insurance under the terms and conditions applicable to coverage for newly born children, as though the date of the order issued under section 14-09-08.10 was the day of the child's birth, and further provided that coverage must be provided to the same extent the general public is covered as long as the minor child meets all the other usual qualifications for insurability and policy or contract premiums are paid. A determination that legal custody will be with a parent other than a parent who pays policy or contract premiums, or on whose behalf payment of policy or contract premiums is made, may not be a basis for cancellation of the minor child's accident and health insurance policy or health service contract.

SECTION 11. AMENDMENT. Section 14-09-08.12 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.12. Authorization to insurer. The signature of the custodial parent of the insured dependent, the obligee, or the obligee's assignee is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services, for the release of information concerning the insured dependent or coverage available to the insured dependent, and otherwise for purposes of verifying coverage and payment for the insured dependent, in the same manner and to the same extent as the signature of the insured.

SECTION 12. AMENDMENT. If House Bill No. 1021 does not become effective, subsection 3 of section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

3. There is a rebuttable presumption that the amount of child support ~~which~~ that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes ~~that factors not considered by the guidelines will result in an undue hardship to the obligor or a child for whom support is sought~~, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:

   a. State the child support amount determined through application of the guidelines;

   b. Identify the criteria that rebut the presumption of correctness of that amount; and

   c. State the child support amount determined after application of the criteria that rebut the presumption.

SECTION 13. AMENDMENT. Section 14-09-09.13 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if

an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the clerk of court shall serve a notice and a copy of ~~this chapter~~ section 14-09-09.14 on the obligor by first-class mail. The notice must be sent within five working days of the appropriate date under subsection 7 if the obligor's address is known to the clerk on that date or, if the address is unknown on that date, within five working days after the clerk is informed of the obligor's address. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.

2. The amount of child support owed and the amount of arrearage, if any.

3. The total amount of money that will be withheld by the income payor from the obligor's income in each month and that the amount is the sum of both of the following:

   a. The obligor's current monthly support obligation.

   b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order to repay an arrearage exists, then an amount equal to twenty percent of the obligor's current monthly support obligation, if any, or equal to the most recent monthly support obligation if there is no current monthly support obligation, for application towards any arrearage subject to the limitations of section 14-09-09.16.

4. That the income payor may withhold an additional sum of three dollars to cover the income payor's expenses.

5. That if not contested pursuant to section 14-09-09.14, the income withholding order will be issued immediately, without further order of the court.

6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.

7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.

8. That the income withholding order applies to any current or subsequent income payor or period of employment.

9. The date the income of the obligor is subject to income withholding, which is the earliest of:

   a. The date the obligor requests income withholding.

b. The date on which an approved income withholding request is made by the obligee.

c. The date the child support obligation becomes delinquent.

SECTION 14. AMENDMENT. Section 14-09-09.16 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.16. Service of income withholding order on income payor. The clerk of court shall serve the income withholding order and a copy of ~~this chapter~~ sections 14-09-09.3 and 14-09-09.15 on the income payor in the manner provided for service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 14-09-09.13 or 14-09-09.20, unless the obligor has contested that notice within ten days of the date of that notice. If a hearing was held under section 14-09-09.14 or 14-09-09.21, the income withholding order and the copy of this chapter must be served within five working days of the date of the court's determination. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order and a copy of this chapter must be served on any known income payor within five working days of the issuance of the judgment or order which requires the payment of child support. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order and a copy of this chapter must be served on any subsequently identified income payor within five working days after the clerk is informed of the name and address of such an income payor. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is properly subject to an income withholding order and that the income payor is therefore required to withhold an amount, determined under subsection 3 of section 14-09-09.13, from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten working days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

2. That the income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.

3. That the amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.

4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.

5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty

percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.

6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.

7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.

8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.

9. That the withholding order has priority over any other legal process under state law against the same wages.

10. If appropriate, that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.

11. When an obligor employed by an income payor terminates that employment, the income payor must promptly so notify the clerk and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

SECTION 15. AMENDMENT. Section 14-09-09.17 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.17. Amendment - Termination of income withholding order. Upon amendment or termination of an income withholding order, the clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payors have been subjected to income withholding orders with respect to a child support obligation, the clerk shall suspend the income withholding order directed to one or more income payors, provided that the amount of child support withheld by the remaining income payor or payors equals the amount determined under subsection 3 of section 14-09-09.13. The clerk shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The clerk shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payor.

SECTION 16. AMENDMENT. Subsection 2 of section 14-12.1-19 of the North Dakota Century Code is amended and reenacted as follows:

2. If the obligor or ~~his~~ the obligor's property is not found in the county, and the prosecuting attorney discovers that the obligor or ~~his~~ the obligor's property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of court

shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. If the documents received by the responding court included three copies of the petition and certificate, and one copy of the act of the initiating state, the documents forwarded by the clerk must also include three copies of the petition and certificate, and one copy of the act of the initiating state. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If ~~the~~ a clerk of ~~a~~ court of this state forwards documents to another court ~~he~~ the clerk shall forthwith notify the initiating court.

SECTION 17. AMENDMENT. Section 14-12.1-24 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-24. Order of support - Change of circumstances - Payment to clerk - Powers and duties of court and prosecuting attorney - Forwarding of order.

1. If the responding court finds a duty of support it shall order the obligor to furnish support or reimbursement therefor in accordance with the provisions of section 14-09-09.7 and may subject the property of the obligor to the order.

2. The court, upon a finding of a material change of circumstances relative to the obligor's discharge of obligations under any existing order for child support or decree of divorce, may modify the order for child support or alimony combined with child support, and order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1 or chapter 50-09 or 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances.

3. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding state.

4. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued.

5. If enforcement is impossible or cannot be completed in the county in which the order was issued, ~~the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which~~ and it appears that proceedings to enforce the order would be effective in another county, the order must be transcribed to that county in the manner provided in section 14-09-08.1, except that a copy of the order so transcribed must be certified to be a true copy of the certified copy of the order. The prosecuting attorney ~~to whom the certified copy~~ of the county to which the order is ~~forwarded~~ transcribed shall proceed with

enforcement and report the results of the proceedings to the ~~court first issuing the order~~ initiating jurisdiction.

SECTION 18. AMENDMENT. Subsection 1 of section 14-12.1-40 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon registration the registered foreign support order must be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner. The registered foreign support order may be transcribed to another county in the manner provided in section 14-09-08.1, except that a copy of the registered foreign support order so transcribed must be certified to be a true copy of the certified copy of the registered foreign support order.

SECTION 19. AMENDMENT. Section 14-17-09 of the North Dakota Century Code is amended and reenacted as follows:

[2] **14-17-09. Pretrial proceedings.**

1. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing ~~must~~ may be held. The court may order that the hearing be held before a referee. The public must be barred from the hearing. A record of the proceeding or any portion thereof must be kept if any party requests, or the court orders. Rules of evidence need not be observed.

2. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

3. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

SECTION 20. AMENDMENT. Section 14-17-18 of the North Dakota Century Code is amended and reenacted as follows:

14-17-18. Right to counsel - Free transcript on appeal.

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[2] NOTE: Section 14-17-09 was also amended by section 7 of House Bill No. 1077, chapter 89.

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel ~~for a~~ to represent the interests of any party who is financially unable to obtain counsel in proceedings leading to the initial judicial determination of parentage under this chapter.

2. A parent who relinquishes or proposes to relinquish a minor for adoption, under section 14-17-24, is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship under that section if the child is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense~~, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons~~. The court shall appoint counsel to represent the interests of a parent who is financially unable to obtain counsel. Prior to the termination proceeding held under section 14-17-24, the court or a person designated by the court shall inform the parent of the right to counsel provided by this section.

3. An attorney appearing on behalf of a child support agency or a county social service board, or the state's attorney, represents the interests of the people of the state of North Dakota in the enforcement of child support obligations. Representation by such an attorney may not be construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the people of the state of North Dakota, regardless of the name in which the action is brought.

4. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

SECTION 21. AMENDMENT. Section 50-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-09-02.1. State agency to submit plans - Administer Family Support Act - Establish data system - Provide capacity for electronic funds transfer.

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under the Family Support Act of 1988 [Pub. L. 100-485; 102 Stat. 2343]. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of the Family Support Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.

2. The state agency shall establish a statewide automated data processing system designed to conform to requirements imposed by or under the Family

Support Act of 1988. The state agency must make that system available for the use of clerks of court in carrying out their duties under section 14-09-08.1. The official records of the state regarding all child support amounts owed, collected, and distributed must be maintained in that system.

3. The statewide automated data processing system must provide capability for electronic funds transfer for the purpose of income withholding and interstate collections.

SECTION 22. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

State agency may compromise claims. The state agency may compromise claims arising out of assignments made under sections 50-09-06 and 50-09-06.1, on such terms as it may deem just and appropriate. The state agency may not be compelled to compromise any claim.

SECTION 23. EFFECTIVE DATE. Section 21 of this Act becomes effective October 1, 1995; provided, however, it is the intention of the legislature that the department of human services take such actions, prior to October 1, 1995, as are reasonably necessary to assure that a functioning, certifiable statewide automated data processing and information retrieval system, designed effectively and efficiently to assist in the management of child support programs, exists on that date.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 153

SENATE BILL NO. 2294
(Senator W. Stenehjem)
(Representative Poolman)

ADOPTION OF AN ADULT

AN ACT to amend and reenact subsections 1 and 7 of section 14-15-11 and subsection 1 of section 14-15-16 of the North Dakota Century Code, relating to notice of a petition to adopt an adult.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 7 of section 14-15-11 of the North Dakota Century Code are amended and reenacted as follows:

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to ~~(a)~~ the department of human services; ~~(b)~~ any agency or person whose consent to the adoption is required by this chapter but who has not consented; ~~(c)~~ a person whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and ~~(d)~~ any person identified by the court as a natural parent or a possible natural parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under section 27-20-45 and section 14-17-24, unless the person has relinquished parental rights or his parental rights have been previously terminated by a court. The notice to the department of human services must be accompanied by a copy of the petition.

   b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.

7. After the filing of a petition to adopt an adult the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented and to each living parent of the adult to be adopted. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the persons involved.

[1] **SECTION 2. AMENDMENT.** Subsection 1 of section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

1. All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, the parents of an adult to be adopted, and representatives of the agencies present to perform their official duties. Upon a showing of good cause by the petitioner, the court may prohibit the parents of an adult to be adopted from attending the adoption hearings and proceedings. A parent of an adult to be adopted who is prohibited by the court from attending the proceedings may submit relevant testimony or information regarding the petition to the court in writing.

Approved March 25, 1993
Filed March 26, 1993

[1] NOTE: Section 14-15-16 was also amended by section 2 of House Bill No. 1107, chapter 154.

CHAPTER 154

HOUSE BILL NO. 1107
(Human Services Committee)
(At the request of the Department of Human Services)

GENETIC PARENT AND SIBLING IDENTIFICATION

AN ACT to amend and reenact subsections 2 and 6 of section 14-15-11 and section 14-15-16 of the North Dakota Century Code, relating to petitions for adoption and to information identifying adopted persons and their genetic parents and siblings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 6 of section 14-15-11 of the North Dakota Century Code are amended and reenacted as follows:

2. An investigation must be made by ~~the department of human services, a county social service board,~~ a licensed child-placing agency~~, or any other qualified agency or person designated by the court,~~ to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.

6. The department of human services ~~or the agency or persons designated by the court to make the required investigation~~, when required to consent to the adoption, may request ~~other departments or agencies within or without this state~~ the licensed child-placing agency to make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the court ~~and shall make similar investigations and reports on behalf of other agencies or persons designated by the courts of this state or another place~~.

SECTION 2. AMENDMENT. Section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

[1] **14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation.** ~~Notwithstanding any other law concerning public hearings and records:~~

1. The provisions of this section supersede any other law regarding public hearings and records.

2. For purposes of this section:

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[1] NOTE: Section 14-15-16 was also amended by section 2 of Senate Bill No. 2294, chapter 153.

a. "Department" means the department of human services.

b. "Genetic parent" includes a man presumed or adjudicated to be the adopted person's father under chapter 14-17 and an alleged father when so indicated in the files of the child-placing agency or the department, but only if there exists in those files information that corroborates the allegation of paternity, including the existence of communications between the alleged father and the child-placing agency, or between the alleged father and the genetic mother or members of her family, or such other corroborative information as may be permitted by rules adopted by the department.

c. "Genetic sibling" means persons with the genetic relationship of sister, brother, half-sister, or half-brother.

3. All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.

~~2.~~ 4. All papers, records, and information pertaining to the adoption whether part of the permanent record of the court or of a file in the department ~~of human services~~ or in an agency are confidential and may be disclosed only in accordance with this section.

~~3.~~ 5. Nonidentifying information, if known, concerning undisclosed genetic parents shall be furnished to:

a. The adoptive parents at the time of adoptive placement or upon their request.

b. An adopted adult upon written request.

6. ~~In addition, the~~ The clerk of the appropriate district court, upon request and payment of the proper fee, shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents or the name of the adopted person prior to the adoption proceedings.

~~4.~~ 7. At the discretion of the child-placing agency, with due regard for confidentiality and upon the consent of all the parties involved, exchanges may take place between the genetic parents, adoptive parents, and adopted child as follows:

a. At the time the child is placed for adoption, the genetic parents and the adoptive parents may meet, in person, without disclosing their names.

b. The genetic parents and the adoptive parents may exchange correspondence through the child-placing agency.

c. The child-placing agency may inform the genetic parents of the death of the child they placed for adoption.

d. The child-placing agency may inform the adopted adult, or the adoptive parents of a minor of the death of a genetic parent.

e. The child-placing agency may inform the genetic parents of pertinent medical information concerning the adopted child or adult.

f. The child-placing agency may inform the adopted adult or the adoptive parents of a minor of pertinent medical information concerning the genetic parents.

~~5.~~ 8. An adopted person who is eighteen years of age or ~~over~~ older may request the department ~~of human services~~ to ~~secure and disclose~~ initiate the disclosure of information identifying the adopted ~~child's~~ person's genetic parents or to ~~secure and disclose~~ initiate the disclosure of nonidentifying information not on file with the ~~board~~ department or a child-placing agency. ~~Similarly, a genetic parent may request the same information about the child that parent placed for adoption who is twenty-one years or older. The department of human services shall, within five working days of receipt of the request, notify in writing the child-placing agency having access to the information requested by the adopted person or the genetic parent. If there has not been established a presumed or adjudicated father under chapter 14-17 then a "genetic parent" includes for the purposes of a request to secure and disclose nonidentifying information not on file with the department or child-placing agency, the alleged father as indicated in the files of the child-placing agency; provided, that there exists in the file information which corroborates the allegation of paternity, including the existence of communications between the alleged father and child-placing agency, or between the alleged father and the natural or adjudicated mother or members of her family, or such other corroborative information permitted by rules adopted by the department of human services.~~

9. An adopted person who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted person's adult genetic sibling.

10. A genetic parent of a person, with respect to whom that parent's parental rights were voluntarily terminated, after that person has reached twenty-one years of age, may request the department to initiate the disclosure of information identifying that person or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.

11. An adult genetic sibling of a person, with respect to whom the parental rights of the sibling's and the person's mutual parent or parents were voluntarily terminated, after that person has reached twenty-one years of age, may request the department to initiate disclosure of information identifying that person.

12. The department shall, within five working days of receipt of a request under subsection 8, 9, 10, or 11, notify in writing a child-placing agency having access to the requested information. If the department's records do not identify any child-placing agency having access to the requested information, the department, within five working days after receipt of the

request, shall so notify the requester in writing. The requester may designate a child-placing agency from a list of such agencies furnished by the department, ask the department to designate an agency, or terminate the request.

~~6.~~ 13. Within ~~three months~~ ninety days after receiving notice of ~~the request of the adopted person or genetic parent~~ a request made under subsection 8, 9, 10, or 11, the child-placing agency shall make complete and reasonable efforts to notify the ~~genetic parents of the adopted person or to notify the person placed for adoption by the genetic parents~~ person or persons with respect to which a disclosure of identifying information has been requested. The child-placing agency must certify the results of its efforts to the department within one hundred twenty days after receipt of the request. The child-placing agency may charge a reasonable fee to the ~~adopted person or the genetic parent~~ requester for the cost of making a search pursuant to ~~this subsection~~ the request. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the ~~genetic parents of the adopted person or with the person placed for adoption by the genetic parents; the~~ person with respect to whom a disclosure of identifying information has been requested. The personal and confidential contact ~~shall~~ may not be by mail and ~~shall~~ must be by an employee or agent of the ~~licensed~~ child-placing agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency~~; the~~.

14. The personal and confidential contact ~~shall~~ must be evidenced by ~~filing with the department of human services~~ an affidavit of notification executed by the person who notified each genetic parent ~~or the~~, adopted person, or genetic sibling and certifying that each genetic parent ~~or the~~, adopted person, or genetic sibling contacted was given the following information:

a. The nature of the identifying information to which the agency has access.

b. The nature of any nonidentifying information requested.

c. The date of the request of the adopted person ~~or~~, genetic parent, or genetic sibling.

d. The right of the genetic parent ~~or the~~, adopted person, or genetic sibling to file, ~~within sixty days of receipt of the notice, an affidavit with the department of human services stating that the identifying information as it relates to the person filing the affidavit should not be disclosed~~ authorize disclosure, or refuse to authorize disclosure.

~~e. The right of the genetic parent or the adopted person to file a consent to disclosure with the department of human services at any time.~~

~~f.~~ e. The effect of a failure of the genetic parent ~~or the~~, adopted person, or genetic sibling to ~~file either a consent to disclosure or an affidavit stating that the identifying information should not be~~

~~disclosed~~ either authorize disclosure or refuse to authorize disclosure.

15. An adopted person, genetic parent, or genetic sibling, with respect to whom a disclosure of identifying information has been requested, may authorize disclosure, refuse to authorize disclosure, or take no action. If no action is taken in response to a request, the child-placing agency must treat that as a refusal to authorize disclosure, except that it does not preclude disclosure after the person's death.

16. The certification of the child-placing agency to the department must include:

a. A statement of whether it has been able to notify the person about whom a disclosure of identifying information was requested and whether a notification was precluded by the death of the person.

b. If a genetic sibling was to be notified at the request of an adopted person, or if an adopted person was to be notified at the request of a genetic sibling, a statement of whether either person knows the identity of any mutual genetic parent.

c. Assurances that:

(1) No disclosure of identifying information has been made with respect to any adopted person, genetic parent, or gentic sibling who has not authorized the disclosure in writing unless the child-placing agency has verified that the person has died leaving no unrevoked written refusal to authorize disclosure.

(2) Any disclosure of identifying information that might lawfully be made under this section was made within ten days after the date of receipt of written authorization or the date on which the agency verified that the person had died.

d. Copies of any written authorization of disclosure or refusal to authorize disclosure.

e. A statement that the person about whom disclosure of identifying information was requested has neither authorized nor refused to authorize disclosure at the time of the certification.

f. The date of each notification.

g. A copy of each affidavit of notification.

~~7.~~ 17. If the child-placing agency ~~certifies to the department of human services that it has been~~ is unable to notify the genetic parent ~~or the~~, adopted person, or genetic sibling within ~~three months~~ ninety days, the identifying information shall not be disclosed ~~to the adopted person or the genetic parent~~.

18. If the child-placing agency ~~certifies to the department of human services that the agency~~ has been able to locate only one genetic parent who ~~consents to~~ authorizes disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted

person. The information disclosed by the agency ~~or by the consenting parent~~ may relate only to ~~that~~ the consenting parent. ~~If a genetic parent or the adopted person has at any time filed with the department of human services an unrevoked affidavit stating that the identifying information should not be disclosed, the department of human services shall not disclose the information identifying that genetic parent or adopted person to the adopted person or that genetic parent until the affidavit is revoked by the filing of a consent to disclosure by that parent or the adopted person.~~

~~8. If, within three months, the child-placing agency certifies to the department of human services that it has notified the genetic parents or the adopted person pursuant to subsection 6, the department of human services shall receive the identifying information from the child-placing agency and disclose the information sixty-one days after the date of the latest notice to either genetic parent or to the adopted person. This disclosure will occur if, at any time during the sixty-one days, the genetic parent or the adopted person has filed an affidavit with the department of human services stating that the information shall be disclosed and the affidavit has not been revoked by the subsequent filing by the genetic parent or adopted person of an affidavit that the information shall not be disclosed.~~

~~9. If the genetic parent or the adopted person has died and has not filed an unrevoked affidavit with the department of human services stating that identifying information shall not be disclosed, the information shall be forwarded to and released by the department of human services to the adopted person or the genetic parent. If the genetic parent or the adopted person has died, and at any time prior to his death the genetic parent or adopted person has filed an unrevoked affidavit with the department of human services stating that the identifying information shall not be disclosed, the adopted person or the genetic parent may petition the court of original jurisdiction of the adoption proceeding for an order for release of the identifying information. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.~~

~~10. Any adopted person eighteen years of age or over whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the department of human services to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 5. An adult sibling may request the same information about a sibling who was placed for adoption who is twenty-one years of age or over. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the department of human services or in an agency, may be released only upon written consent of the adult sibling and any living genetic parents of the adult sibling if the adult sibling knows of their identity.~~

19. The child-placing agency, acting on the request of an adopted person to disclose identifying information about a genetic sibling, or acting on the request of a genetic sibling to disclose identifying information about an

adopted person, must determine if either person knows the identity of a living mutual genetic parent. If either person knows the identity of a living mutual genetic parent, no disclosure may be made unless that parent is first notified, in the manner provided for in subsection 13, and authorizes the disclosure.

~~11.~~ 20. Upon application to the department ~~of human services~~ by an adult adopted person or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted person's eligibility for enrollment as a member of an Indian tribe.

a. The department ~~of human services~~ may inquire of any person or agency~~,~~ including a licensed child-placing agency in North Dakota to assist in the investigation.

b. All identifying information obtained by the department ~~of human services~~ shall remain confidential.

c. The bureau of Indian affairs may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted person for enrollment in an Indian tribe. Prior to the department's release of information to the bureau of Indian affairs, the department will obtain written assurance from the bureau of Indian affairs that the information provided will remain confidential, and will not be furnished to any unauthorized person or agency.

d. The procedure used in contacting the genetic parents of the adopted child shall be a personal and confidential contact. Any necessary contact shall be made by an employee or agent of a licensed child-placing agency or the department ~~of human services~~. The information requested of the genetic parents shall be limited to that information necessary to make a determination of the adopted person's eligibility for enrollment in an Indian tribe.

e. The department ~~of human services~~ may charge a reasonable investigation fee.

~~12.~~ 21. No person may be required to disclose the name or identity of either an adoptive parent or an adopted person except:

a. In accordance with this section;

b. As authorized in writing by the adoptive parent or the adopted person;

c. Upon order of the court ~~for good cause shown in exceptional cases~~ entered in a proceeding brought under subsection 22.

22. An adopted person, a genetic parent, a genetic sibling, or a guardian of any of those persons may petition the district court for an order directing the disclosure of identifying information. The petitioner must state that efforts to secure the requested disclosure have been made under this section or are forbidden under this section, that the petitioner has a significant need for the disclosure, and the nature of that need. The petition must name the department and any child-placing agency which has

received a request under subsection 8, 9, 10, or 11 as respondents. The respondents must furnish, to the court, for in-camera review, copies of such records as the respondents may possess that contain requested identifying information. The court may determine if persons about whom the disclosure of identifying information is requested must be furnished notice of the proceeding, and may require that the respondents give notice to those persons. If those persons participate in the proceeding, they must be permitted to do so in a manner, to be determined by the court, which avoids disclosure of identifying information except when disclosure is ordered by the court. The court may order disclosure only if the petitioner demonstrates that disclosure will not result in any substantial harm to the person about whom identifying information is sought. The court may not order the disclosure of identifying information concerning any person who objects to that disclosure.

~~13.~~ 23. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.

~~14.~~ 24. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.

~~15.~~ 25. The department ~~of human services~~ shall make such reasonable rules ~~and regulations~~ as are necessary to carry out the purposes of this section.

Approved March 16, 1993
Filed March 16, 1993

EDUCATION

CHAPTER 155

HOUSE BILL NO. 1233
(Representatives Mutzenberger, Rydell)
(Senators Lips, Heinrich)

BISMARCK STATE COLLEGE LAND

AN ACT to authorize the state board of higher education to exchange certain state-owned land at Bismarck state college for certain property owned by Robert Asker.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. EXCHANGE OF LAND BY THE STATE BOARD OF HIGHER EDUCATION AND ROBERT ASKER AUTHORIZED.

1. The state board of higher education may exchange title to the property described in this subsection for title to the property described in subsection 2 which is owned by Robert Asker: All that part of the southeast one-quarter of section thirty, township one hundred thirty-nine north, range eighty west, of the fifth principal meridian, Burleigh County, North Dakota that lies within the traverse beginning at the southeast corner of section thirty; thence south eighty-nine degrees twenty-five minutes forty-seven seconds west along the south line of section thirty a distance of nine hundred and twenty-four feet; thence north zero degrees fourteen minutes two seconds east a distance of one hundred eighty and two-hundredths feet to the point of beginning. From the point of beginning, the traverse continues north zero degrees fourteen minutes two seconds east, parallel with and nine hundred twenty-four feet west of the east line of section thirty a distance of five hundred sixty-six and thirty-hundredths feet to the south right-of-way line of interstate ninety-four; thence south sixty-four degrees thirty-nine minutes fifty-five seconds west along said right-of-way line a distance of nine hundred and twenty feet; thence south seventy-two degrees thirty-two minutes and eight seconds east a distance of five hundred eighty-four and fifteenth-hundredths feet; thence north eighty-nine degrees twenty-five minutes and forty-seven seconds east, parallel with and one hundred and eighty feet north of the south line of section thirty a distance of two hundred and seventy-two feet to the point of beginning. This tract contains five and ninety-six hundredths acres, more or less.

2. Title to the property described in this subsection and owned by Robert Asker may be accepted by the state board of higher education in exchange for title to the property described in subsection 1: The south one hundred and eighty feet of the east nine hundred and twenty-four feet of the south east one-quarter of the south east one-quarter of section thirty, township one hundred and thirty-nine north, range eighty west, of the fifth principal meridian, Burleigh County, North Dakota except the east two hundred and eight and seventy-one hundredths feet thereof. This tract contains two and ninety-six hundredths acres, more or less.

3. The exchange authorized by this Act is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.

4. All legal documents required for the exchange authorized by this Act, including title opinions, must be reviewed as to form and legality by the attorney general.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 156

SENATE BILL NO. 2538
(Senators Lips, Mushik)
(Approved by the Delayed Bills Committee)

BISMARCK STATE COLLEGE PROPERTY EXCHANGE

AN ACT to authorize the state board of education to exchange certain state-owned land at Bismarck state college for certain property owned by the Theodore Roosevelt Medora foundation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Exchange of land between state board of higher education and Medora foundation.

1. The state board of higher education may exchange title to lots one and three, block one, Schafer heights addition to the city of Bismarck, North Dakota, containing one hundred fifty-four thousand two hundred forty-seven square feet, more or less, for title to the property described in subsection 2 which is owned by the Theodore Roosevelt Medora foundation.

2. The property described in this subsection and owned by the Theodore Roosevelt Medora foundation may be accepted by the state board of higher education in exchange for the property described in subsection 1:

   a. All that part of lot one, block two, Schafer heights addition to the city of Bismarck, North Dakota described as follows: beginning at the southwest corner of lot one, block two, Schafer heights; thence bearing north seventeen degrees twelve minutes twenty-nine seconds west along the west line of lot one a distance of 476.19 feet to the northwest corner of lot one; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along the north line of lot one a distance of 59.76 feet; thence bearing south seventeen degrees fifty-three minutes forty-eight seconds east a distance of 477.95 feet to the south line of lot one, block two, Schafer heights; thence bearing south eighty-nine degrees thirty-two minutes zero seconds west along the south line of lot one a distance of 65.73 feet to the point of beginning. This described tract contains twenty-eight thousand six hundred nine square feet, more or less.

   b. All that part of lot two, block two, Schafer heights addition to the city of Bismarck, North Dakota, described as follows: beginning at the southwest corner of lot two, block two, Schafer heights; thence bearing north seventeen degrees twelve minutes thirty-nine seconds west along the west line of lot two a distance of 139.93 feet to the northwest corner of lot two; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along the north line of lot two a distance of 65.73 feet; thence bearing south seventeen degrees fifty-three minutes forty-eight seconds east a distance of 140.45 feet to the south line of lot two, block two, Schafer heights; thence

bearing south eighty-nine degrees thirty-two minutes zero seconds west along the south line a distance of 67.49 feet to the point of beginning. This described tract contains eight thousand nine hundred twenty-four square feet, more or less.

c. All that part of auditor's lot A of auditor's lot thirty in the northwest quarter of section thirty-two, township 139 north, range eighty west of the fifth principal meridian, Burleigh County, North Dakota, described as follows: beginning at the southwest corner of lot two, block two, Schafer heights addition to the city of Bismarck, North Dakota; thence bearing south eighty-nine degrees thirty-two minutes zero seconds west a distance of 221.21 feet; thence bearing north zero degrees twenty-eight minutes zero seconds west a distance of 134.00 feet to the north line of lot A; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along north line of lot A a distance of 180.90 feet to the northwest corner of lot two, block two, Schafer heights; thence bearing south seventeen degrees twelve minutes twenty-nine seconds east along the west line of lot two a distance of 139.93 feet to the point of beginning. This described tract contains twenty-six thousand nine hundred forty-one square feet, more or less.

d. All that part of auditor's lots F, G, H, and I of auditor's lot thirty in the northwest quarter of section thirty-two, township 139 north, range eighty west of the fifth principal meridian, Burleigh County, North Dakota described as follows: beginning at the southwest corner of lot one, block two, Schafer heights addition to the city of Bismarck, North Dakota; thence bearing south eighty-nine degrees thirty-two minutes zero seconds west along the south line of auditor's lots F, G, and H a distance of 180.90 feet; thence bearing north zero degrees twenty-eight minutes zero seconds west a distance of 456.00 feet to the north line of auditor's lot F; thence bearing north eighty-nine degrees thirty-two minutes zero seconds east along the north line of auditor's lot F a distance of 43.71 feet to the northwest corner of lot one, block two, Schafer heights; thence bearing south seventeen degrees twelve minutes thirty-nine seconds east along the west line of lot one, block two, Schafer heights, a distance of 476.19 feet to the point of beginning. This described tract contains fifty-one thousand two hundred sixteen square feet, more or less.

3. The exchange authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5.

4. The attorney general shall review as to form and legality all legal documents required for the exchange authorized by this Act, including title opinions.

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

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 157

SENATE BILL NO. 2102
(Education Committee)
(At the request of the Board of University and School Lands)

UNIVERSITY AND SCHOOL LANDS INCOME

AN ACT to amend and reenact sections 15-03-05.1 and 15-03-05.2 of the North Dakota Century Code, relating to calculation and distribution to fund beneficiaries of income that has been earned by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-03-05.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-03-05.1. Calculation of ~~investment~~ fund income. At the end of each fiscal year, the board shall calculate the ~~investment~~ income earned by the permanent funds. ~~The investment income earned by the funds shall equal the amount of interest on debt securities and dividends on equity securities. If the sale of securities results in a net gain or loss during a fiscal year, the net gain or loss must be amortized to investment income in equal annual installments over a ten-year period. In lieu of amortizing any fiscal year net loss on the sale of securities, the board may recover such loss, in whole or in part, from past unamortized capital gains and future net realized capital gains.~~ The net gain or loss realized on the sale of investment securities for the year must be amortized to fund income in equal annual installments over a ten-year period.

SECTION 2. AMENDMENT. Section 15-03-05.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-03-05.2. Distribution of ~~investment~~ fund income. The board shall distribute only that portion of the ~~investment~~ fund income that is consistent with the long-term goals of preserving the purchasing power of the funds and maintaining income stability to the fund beneficiaries. The ~~investment~~ income that is retained ~~to preserve the purchasing power of the principal~~ must be added to the ~~principal~~ permanent funds and remain inviolate. No ~~investment~~ income may be retained and added to the ~~principal~~ permanent funds if it would result in a decrease in distributions to the common schools or other fund beneficiaries from the amount distributed during the preceding year. Actual cash distributed during a fiscal year must be based on the estimated income of each fund. If the board's determination of the amount to be distributed for a fiscal year is different than the actual cash distributed, an adjustment must be made to the distributions during the following fiscal year. For the purpose of this section, any such adjustment must be considered part of the prior fiscal year's distribution.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 158

SENATE BILL NO. 2099
(Education Committee)
(At the request of the Board of University and School Lands)

UNIVERSITY AND SCHOOL LANDS SALES AND LEASES

AN ACT to amend and reenact sections 15-04-10 and 15-06-26 of the North Dakota Century Code, relating to the place of sale or leasing of property owned by the board of university and school lands and appointment of a person to conduct the leasing of these properties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-04-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-04-10. Leasing to be by auction - Requirements governing. The commissioner of university and school lands, or such other person ~~as may be~~ appointed by the ~~board of university and school lands~~ commissioner, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the ~~courthouse or the place where terms of the district court are held~~ county seat. The auction must commence on the day and time specified in the advertisement for the leasing. Notice must be given when the land is offered for lease, that all bids are subject to approval by the board. In counties where a large number of tracts of land are to be leased, the land situated in certain townships may be designated in the advertisement to be leased on certain specified days, and in that case the lands must be leased or offered for lease on the days specified. If all designated lands are not offered for lease because of lack of time, the leasing of the lands unoffered may be adjourned until the following day or days when they must be the first lands offered for lease. Lands that have not been subdivided specially must be offered for lease in tracts of one-quarter section each, except as provided in section 15-08-25. Lands specially subdivided may be offered for lease in the smallest subdivision thereof. At the time of offering the lands for lease, the county auditor of the county shall act as clerk. Within five days after the completion of the auction the county auditor shall certify to the board of university and school lands a list of the lands leased, the price for which each tract was leased, the name of each lessee, and the initial amount of money paid by each lessee for rent.

SECTION 2. AMENDMENT. Section 15-06-26 of the North Dakota Century Code is amended and reenacted as follows:

15-06-26. Manner of sale - Purchase price. At the time appointed for the sale, the commissioner of university and school lands, ~~his~~ the commissioner's deputy, or any other person appointed by ~~him~~ the commissioner shall proceed to sell or offer for sale the land so advertised to be sold at public auction to the highest bidder. The sale shall be held at the ~~front door of the courthouse or of the place where the terms of the district court are held~~ county seat, in the county in which the land is situated. Lands that have not been subdivided specially shall be

offered in tracts of one quarter section, and those subdivided shall be sold in the smallest subdivision thereof. No tract shall be sold for less than the fair market value thereof or for less than ten dollars per acre [.40 hectare]. If the tract to be sold consists of grant lands once sold on contract and the contract has been canceled, and the lands form a single farm unit, the entire tract may be sold as a single tract and farm unit.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 159

HOUSE BILL NO. 1300
(Representatives A. Olson, Hanson)
(Senators Keller, Urlacher)

LAND BOARD LEASE OIL ROYALTIES

AN ACT to amend and reenact section 15-05-10 of the North Dakota Century Code, relating to royalties from board of university and school lands oil and other mineral leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-05-10 of the North Dakota Century Code is amended and reenacted as follows:

15-05-10. Royalties from oil leases - Rents from other leases - Rules. Oil leases ~~shall~~ must be made by the board of university and school lands at such annual minimum payments as ~~shall be~~ are determined by the board, but the royalty shall be not less than twelve and one-half percent of the gross output of oil from the lands leased. Oil leases made by the board may authorize a royalty of less than twelve and one-half percent for production from stripper well properties and qualifying secondary recovery and qualifying tertiary recovery projects as defined in section 57-51.1-01. Leases for gas, coal, cement materials, sodium sulfate, sand and gravel, road material, building stone, chemical substances, metallic ores, or colloidal or other clays ~~shall~~ must be made by the board in such annual payments as ~~shall be~~ are determined by the board. The board may adopt rules regarding annual payments and royalties under this section.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 160

SENATE BILL NO. 2103
(Education Committee)
(At the request of the Board of University and School Lands)

STATE LAND SALE TERMS

AN ACT to amend and reenact sections 15-06-27, 15-06-28, and 15-08-06 of the North Dakota Century Code, relating to cash sale of land by the board of university and school lands and the procedure for executing and delivering purchase agreements and contracts to the purchaser.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-06-27 of the North Dakota Century Code is amended and reenacted as follows:

15-06-27. Terms of sale - Sale to highest bidder - Penalty for failure to make first payment. The board of university and school lands may sell original grant land either for cash or under contract. The highest bidder for any tract of land offered for sale under this chapter shall be declared the purchaser thereof. ~~The~~ A purchaser under contract shall pay twenty percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six percent of the original purchase price. An amount equal to not less than three percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on the purchase price. If the purchaser fails to pay the amount required to be paid at the time of sale, the commissioner or other person conducting the sale may reoffer the tract for sale immediately, but no bid shall be received from the person failing to pay as aforesaid. Any person refusing or neglecting to make such initial payment after purchase shall forfeit an amount equal to ten percent of the purchase price or final bid to be recovered for the benefit of the fund to which the land belongs by civil suit in the name of the state.

SECTION 2. AMENDMENT. Section 15-06-28 of the North Dakota Century Code is amended and reenacted as follows:

15-06-28. Execution of contract - Failure. Immediately upon the sale by the board of university and school lands, the purchaser shall execute a purchase agreement for a cash sale or a contract ~~in duplicate~~ in the form prescribed by the board. The failure of a purchaser to execute ~~the~~ a purchase agreement or a contract shall constitute a forfeiture of the payment made at or before the sale. When ~~the~~ a purchase agreement or contract is executed properly by the commissioner, ~~the~~ a copy ~~marked "duplicate"~~ shall be delivered to the purchaser. ~~Each contract executed shall have on the face a notation of the date of delivery of the duplicate to the purchaser.~~

SECTION 3. AMENDMENT. Section 15-08-06 of the North Dakota Century Code is amended and reenacted as follows:

15-08-06. Void sales - Surrender of contract - Refunding of money. Any sale made by mistake, or not in accordance with law, or obtained by fraud shall be void, and the purchase agreement or contract of purchase issued thereon shall be of no effect. In such case, the holder of the purchase agreement or contract shall be required to surrender it to the board of university and school lands, and the board, except in case of fraud on the part of the purchaser, shall cause the money to be refunded to the holder of the void purchase agreement or contract.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 161

SENATE BILL NO. 2100
(Education Committee)
(At the request of the Board of University and School Lands)

STATE PROPERTY CONVEYANCES

AN ACT to amend and reenact section 15-09-04 of the North Dakota Century Code, relating to the type of instrument used by the board of university and school lands to convey property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-09-04 of the North Dakota Century Code is amended and reenacted as follows:

15-09-04. Board to fix price for lands described in application - Conveyance. If the board of university and school lands shall conclude at the hearing that the land described in the application is required for the purposes stated in such application, it shall fix a price, not less than the appraised valuation thereof, at which the conveyance of the entire tract of land will be made voluntarily. If the land described in the application is less than an entire tract, the board, in fixing the price at which such partial tract will be conveyed, shall take its value into consideration together with all detriment caused to the remaining portions of the tract by the conveyance of the partial tract. If the applicant shall agree to the price fixed by the board for the land described in the application and shall pay the full purchase price therefor, the board shall cause ~~a patent conveying~~ the tract to be ~~executed~~ conveyed to the applicant.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 162

SENATE BILL NO. 2514
(Senators Kelly, DeMers, Nalewaja)
(Representative St. Aubyn)

BOARD OF HIGHER EDUCATION STUDENT MEMBER

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to student membership on the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-02. Membership of state board of higher education - Qualifications of members - Advisory representatives. The state board of higher education shall consist of seven members, all of whom shall be qualified electors and taxpayers of the state who shall have resided in this state for five years immediately preceding their respective appointments. The members of the board shall be appointed by the governor and confirmed by the senate. Nominations shall be made by the governor from a list of three names for each position to be filled on such board, such names to be selected by the unanimous action of the president of the North Dakota education association, the chief justice of the supreme court, and the superintendent of public instruction. There shall not be on said board at any one time more than one graduate of any one of the institutions under the jurisdiction of the board. No person employed by any institution under the control of the board shall serve as a member of the board, nor shall any employee of any such institution be eligible for membership on the board for a period of two years following the termination of employment. In addition to the regular board members, a nonvoting advisory representative from the North Dakota student association and one from the council of college faculties may attend and provide input at all board meetings. Each year the North Dakota student association executive board shall select one member to serve as its representative for a term of one year. The student advisory representative must be a resident of North Dakota and ~~be~~ a ~~full-time~~ student in good academic standing, enrolled in a minimum of six credits. The council of college faculties shall each year select one member to serve as its representative. The student advisory representative and the council of college faculties representative are entitled to receive necessary expenses for travel.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 163

SENATE BILL NO. 2379
(Senators Goetz, Robinson)
(Representatives Byerly, Gates)

FACULTY ENGLISH PROFICIENCY

AN ACT to amend and reenact section 15-10-13.1 of the North Dakota Century Code, relating to English proficiency of graduate assistants at state institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-13.1. Faculty - English language proficiency. Any professor, instructor, teacher, ~~or~~ assistant, or graduate assistant at a state institution of higher education must exhibit written and verbal proficiency in the English language. Any deficiency must be remedied by special training or coursework provided by the institution.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 164

SENATE BILL NO. 2089
(Appropriations Committee)
(At the request of the State Board of Higher Education)

HIGHER EDUCATION INSTITUTION FINANCIAL STATEMENTS

AN ACT to amend and reenact section 15-10-14 of the North Dakota Century Code, relating to the time of making financial statements for institutions under the control of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-14 of the North Dakota Century Code is amended and reenacted as follows:

15-10-14. Accounts and records of institutions - Examination and audit. The state board of higher education shall prescribe for all of the institutions under its control standard systems of accounts and records. The board shall require financial statements on a ~~monthly~~ quarterly basis from each institution, which shall be in such form as the board shall prescribe and the board shall have the authority to examine, review, and audit the books and records of the institutions under its control. Such institutions shall provide such financial information and such assistance in the conduct of the board's reviews and audits as the board may request.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 165

HOUSE BILL NO. 1066
(Representatives Coats, R. Berg)

TUITION WAIVERS

AN ACT to amend and reenact sections 15-10-18.3 and 15-10-18.5 of the North Dakota Century Code, relating to tuition waivers at state-supported institutions of higher education and state-supported technical or vocational schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-18.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-18.3. Free tuition in North Dakota institutions of higher education. Any dependent, as defined in section 15-10-18.2 upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, ~~may~~ shall be ~~granted a waiver of~~ allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds~~. The waiver must be based upon a showing of financial need, using the same criteria as that used to determine eligibility for federal financial aid under Title IV of the Higher Education Act of 1965, as amended. The waiver applies only to a~~; provided, however, that the bachelor's degree or certificate of completion ~~that~~ is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges shall not include costs for aviation flight charges or expenses. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, there shall be no removal from the benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action.

SECTION 2. AMENDMENT. Section 15-10-18.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-18.5. Free tuition in North Dakota institutions of higher education for survivor of firefighter or peace officer. Should a firefighter or peace officer die as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, ~~may~~ must be ~~granted a waiver of~~ allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds~~. The waiver must be based upon a showing of financial need, using the same criteria as that used to determine eligibility for federal financial aid under Title IV of the Higher Education Act of 1965, as amended. The waiver applies only to a~~; provided, however, that the bachelor's degree or certificate of completion ~~that~~ is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

Approved March 12, 1993
Filed March 12, 1993

CHAPTER 166

SENATE BILL NO. 2262
(Senators Nelson, Heinrich, Nalewaja)
(Representatives Clayburgh, Howard, Soukup)

RESIDENCY OF STUDENTS FOR TUITION PURPOSES

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the definition of resident and nonresident students for purposes of tuition; and to repeal section 15-10-19 of the North Dakota Century Code, relating to the definition of nonresident students for purposes of tuition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Nonresident and resident student for tuition purposes defined.

1. A "nonresident student" for tuition purposes means any student other than a resident student.

2. A "resident student" for tuition purposes means:

   a. A person less than eighteen years of age whose guardian, custodial parent, or parents reside in this state and have resided in this state for twelve months immediately prior to the date of registration;

   b. A person of age eighteen or over who resides in this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the date of registration, provided the person is not a dependent of a parent who is not a resident of this state;

   c. A person who graduated from a North Dakota high school within sixty-four months of registration;

   d. A full-time active duty member of the armed forces assigned to a military installation in this state;

   e. A spouse or dependent of a full-time active duty member of the armed forces assigned to a military installation in this state, a dependent of an instructor who lives and teaches in any institution of higher education in this state; and a spouse of any other resident for tuition purposes; and

   f. Any other person who registers within sixty months after residing in this state for a period of at least thirty-six consecutive months.

3. A temporary absence from the state for vacation or other special or temporary purposes may not be considered an abandonment of residency in this state, provided a residence is maintained in this state during the

temporary absence. However, a student who leaves the state and resides in another state for a period of months is not considered a resident of this state during those months if the student does not maintain a place of residence in this state during the student's absence.

SECTION 2. REPEAL. Section 15-10-19 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 167

HOUSE BILL NO. 1313
(Representatives Svedjan, Boucher, Brodshaug, Poolman, Stenehjem)
(Senator DeMers)

FETAL ALCOHOL SYNDROME CENTER

AN ACT to establish a fetal alcohol syndrome center, to require a prevalence study of fetal alcohol syndrome in the state, and to develop a fetal alcohol evaluation and treatment program at the medical center rehabilitation hospital at the university of North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Fetal alcohol syndrome center established. There is established in the department of neuroscience at the university of North Dakota school of medicine a fetal alcohol syndrome center. The state board of higher education shall appoint a person from the department of neuroscience as director of the fetal alcohol syndrome program and that person shall prepare an annual report on the status of fetal alcohol syndrome in North Dakota. The center shall develop prevention activities in groups that are at high risk for fetal alcohol syndrome. The center may enlist the aid of other agencies, persons, or organizations in its activities. The responsibilities of the program include:

1. To develop incidence and prevalence data on fetal alcohol syndrome in this state.
2. To conduct research on prevention and management of fetal alcohol syndrome and maternal alcohol ingestion during pregnancy.
3. To develop a center for the evaluation of children with fetal alcohol syndrome from this state in cooperation with the child evaluation and treatment program at the medical center rehabilitiation hospital at the university of North Dakota and to operate followup clinics as funding allows.
4. To provide consultation and training across the state on fetal alcohol syndrome.
5. To conduct other activities as may be directed by a state fetal alcohol syndrome task force.

SECTION 2. Fetal alcohol syndrome prevalence study. The center shall coordinate a study of the prevalence of fetal alcohol syndrome in school-age children in this state. The study must review the prevalence of fetal alcohol syndrome in both rural and urban North Dakota communities, including North Dakota Indian reservations.

SECTION 3. Evaluation of children with fetal alcohol syndrome. The child evaluation and treatment program at the university of North Dakota medical center rehabilitation hospital shall develop a clinic to provide both initial diagnostic

assessment and reevaluation of children with fetal alcohol syndrome. The diagnostic assessment must include a comprehensive multidisciplinary assessment of psychological, speech and language, educational, occupational therapy, physical therapy, optometric, and audiological evaluations. Reevaluations must be individualized according to a child's needs. The center shall provide consultative services to schools, community agencies, and parents to assist in serving children diagnosed with fetal alcohol syndrome.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $40,750, or so much of that sum as may be necessary, to the department of human services for the purpose of effectuating sections 1 through 3 of this Act for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 168

SENATE BILL NO. 2072
(Education Committee)
(At the request of the State Board of Vocational Education)

POSTSECONDARY EDUCATION PROGRAMS

AN ACT to amend and reenact sections 15-20.4-02 and 15-20.4-04 of the North Dakota Century Code, relating to postsecondary educational institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.4-02. Exemptions. The following education and educational institutions are exempted from the provisions of this chapter:

1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
4. Certain education provided through short-term programs as determined by the board.
5. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided the education is not advertised or promoted as leading toward educational credentials.

~~5.~~ 6. Postsecondary educational institutions established, operated, and governed by this state or its political subdivisions, as determined by the board and any educational consortium that includes one or more of the institutions.

~~6.~~ 7. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.

~~7.~~ 8. Schools of barbering regulated under chapter 43-04.

~~8.~~ 9. Schools of cosmetology regulated under chapter 43-11.

~~9.~~ 10. Schools of nursing regulated under chapter 43-12.1.

~~10.~~ 11. Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.1.

~~11.~~ 12. Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.

SECTION 2. AMENDMENT. Section 15-20.4-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.4-04. Minimum standards. All postsecondary educational institutions ~~shall~~ must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution domiciled in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or a substantial good faith showing of progress toward such status. Only upon accreditation shall an institution become eligible for a regular authorization to operate. This section does not apply to nonacademic or nonprofessional postsecondary institutions domiciled in this state and enrolling a limited number of students as determined by the board.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 169

HOUSE BILL NO. 1343
(Representatives Svedjan, Boucher)

MATERNAL AND CHILD HEALTH PROGRAMS

AN ACT relating to the consolidation of maternal and child health programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. CONSOLIDATION OF MATERNAL AND CHILD HEALTH PROGRAMS. The state health officer, executive director of the department of human services, superintendent of public instruction, and any other head of a state agency administering a maternal or child health program, as determined by the state health officer, shall work together to consolidate all state-administered maternal and child health programs under a single agency. The agency heads working together under this Act shall determine which agency could most effectively and efficiently administer maternal and child health programs. The agency selected to administer the consolidated programs shall include in its budget estimate submitted to the office of the budget under North Dakota Century Code section 54-44.1-04, the estimate necessary for funding the consolidated maternal and child health programs for the 1995-97 biennium. The agency selected to administer the consolidated programs shall prepare any legislation necessary to effectuate the consolidation by August 1, 1994. That agency shall submit that legislation to the fifty-fourth legislative assembly.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 170

HOUSE BILL NO. 1467
(Representatives Grosz, Freier, Wilkie)
(Senators Kelsh, Urlacher)

STUDENT PERFORMANCE AND SCHOOL DECISIONMAKING

AN ACT to amend and reenact sections 15-21-04.6 and 15-29-08.3 of the North Dakota Century Code, relating to student performance standards and assessment and school district policies and plans for participatory school decisionmaking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-21-04.6 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-04.6. Student performance standards and assessment - Preliminary activities - Continuing appropriation.

1. The superintendent of public instruction, subject to the financial limitations imposed by subsection 2, shall conduct preliminary research and engage in other appropriate activities to prepare for the development of student performance standards and the assessment program to be implemented during the ~~1993-95~~ 1997-99 biennium.

2. The funding for the activities of the superintendent described in subsection 1 must be provided from contributions, gifts, or grants received from the federal government, private organizations, or other nonstate sources and may be used only for the specific purpose for which the funds were contributed. These funds are hereby appropriated to the superintendent for the purpose of implementing subsection 1. The superintendent is not required to implement subsection 1 if adequate funding does not become available pursuant to this subsection.

SECTION 2. AMENDMENT. Section 15-29-08.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-29-08.3. School district policy and plan for participatory school decisionmaking.

1. By July 1, ~~1994~~ 1998, each school board of a public school district, including the Fargo school district, shall adopt a policy and plan for implementing participatory school decisionmaking in that school district, including a description of how teachers, parents, school administrators, and other school employees of a school are to be involved in the decisionmaking process. Each school board, prior to adopting the policy and plan, shall adopt a procedure whereby all interested persons are afforded a reasonable opportunity to submit their views concerning the content of the policy and plan, which views are not binding on the school board.

2. The superintendent of public instruction shall develop nonbinding guidelines to assist school boards in the development of policies and plans relating to participatory school decisionmaking, and make the guidelines available to nonpublic schools.

3. By July 1, ~~1994~~ 1998, each school board shall submit to the superintendent of public instruction a copy of the policy and plan for the school district. On July first of each even-numbered year thereafter, each school board shall submit to the superintendent a copy of a written evaluation of the policy and implementation plan and copies of any amendments to the policy and plan.

4. This section may not be construed to impair the rights, powers, or duties of local school districts and school boards in the management and control of local schools.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 171

SENATE BILL NO. 2418
(Senators DeMers, Lindgren)
(Representatives Rydell, Goffe)

EDUCATION PRACTICES

AN ACT to amend and reenact sections 15-21-09, 15-36-01, 15-36-01.1, 15-36-08, 15-36-10, 15-36-11, 15-36-14.1, 15-36-15, 15-36-16, 15-36-17, 15-38-17, 15-38-18, 15-38-19, 15-47-28, 15-47-30, subdivision q of subsection 1 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to teachers' certificates, the duties of the education standards practices board, and the duties of the administrator's professional practices board; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-21-09 of the North Dakota Century Code is amended and reenacted as follows:

15-21-09. ~~Certification of teachers -~~ Standardization of schools - Textbooks - Examinations - Courses of study. The superintendent of public instruction ~~shall have~~ has charge and supervision of the ~~certification of teachers,~~ standardization of schools, uniformity of textbooks, examinations for eighth grade and high school pupils, and preparation of courses of study for the ~~several~~ classes of public schools.

SECTION 2. AMENDMENT. Section 15-36-01 of the North Dakota Century Code is amended and reenacted as follows:

15-36-01. Teachers' certificates - Criteria to be established. The ~~superintendent of public instruction, after consulting with the teachers' professional practices commission,~~ education standards and practices board shall determine the criteria for teacher certification for school terms beginning on or after July 1, ~~1974~~ 1995. The ~~established~~ criteria shall be based upon standards which ~~shall~~ include considerations of character, adequate educational preparation, and general fitness to teach in the public schools of this state. After holding a public hearing ~~thereon~~, the ~~superintendent~~ board shall issue rules ~~and regulations~~ concerning the issuance of teachers' certificates, and ~~such~~ certificates shall be issued by ~~his~~ the board's office in accordance with ~~such~~ the rules ~~and regulations~~. However, any teacher who has graduated from college in an accredited teacher education program on or before September 1, 1980, shall not be required to earn any college credits in native American or other multicultural courses in order to be certified or recertified. Nothing in this section shall be interpreted to affect the validity of life certificates in existence on July 1, 1973, nor shall this section affect vocational education certificate qualifications as provided in chapter 15-20.1.

SECTION 3. AMENDMENT. Section 15-36-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-01.1. Teachers' certificates - Student transcript. A student who has met all the criteria necessary to receive a teacher's certificate, but who has not graduated from a college or university, may request a copy of the student's completed transcript from the college or university the student attended. Within ten days of the request by the student, the college or university shall mail a copy of the transcript to the ~~superintendent of public instruction~~ educational standards and practices board showing that the student has met all the criteria necessary to receive a teacher's certificate except graduation. The transcript must indicate areas in which the student has a major or minor.

SECTION 4. AMENDMENT. Section 15-36-08 of the North Dakota Century Code is amended and reenacted as follows:

15-36-08. Fees for certificates. The ~~superintendent of public instruction~~ education standards and practices board shall ~~require~~ determine a fee ~~of five dollars~~ for each certificate issued by this state, and no certificate shall be issued for a period of less than one school year. The fees ~~herein provided for~~ shall be deposited in the state treasury to the credit of the general fund of the state.

SECTION 5. AMENDMENT. Section 15-36-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-10. Teachers' certificates valid in county only when recorded in the office of the county superintendent of schools of such county. Any certificate issued by the ~~superintendent of public instruction~~ education standards and practices board shall authorize the holder to teach in any county of the state when it is recorded in the office of the county superintendent of schools of such county. Teachers serving multidistrict or multicounty positions shall record the certificate only in the county containing the administrative unit. Nothing contained in this chapter affects the validity of any certificate lawfully issued prior to July 1, 1995.

SECTION 6. AMENDMENT. Section 15-36-11 of the North Dakota Century Code is amended and reenacted as follows:

15-36-11. Certificate required. No person who is not the holder of a valid teacher's certificate ~~shall~~ may be permitted or employed to teach in any of the public schools of the state, except that teachers unable to be certificated because they are not citizens of the United States or because they have not declared their intention to become citizens of the United States, but are otherwise qualified to teach in North Dakota, may be employed on a temporary basis if they are approved annually by the ~~superintendent of public instruction~~ education standards and practices board. The employment of ~~such~~ teachers in accordance with this section ~~shall~~ may not cause any foundation aid payments to be withheld from the school districts by whom they are employed.

SECTION 7. AMENDMENT. Section 15-36-14.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-14.1. State's attorney - Duty to notify the ~~superintendent of public instruction~~ education standards and practices board and the administrator's professional practices board. The state's attorney shall notify the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator,

in writing, whenever a certificated teacher or administrator is convicted of a felony or a class A misdemeanor.

SECTION 8. AMENDMENT. Section 15-36-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-15. Revocation of teacher's certificates - Grounds - Effect. The ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator may suspend for a period of time, or revoke and annul any teacher's or administrator's certificate granted in this state upon any or all of the following grounds:

1. For any cause which would have authorized or required the ~~superintendent~~ education standards and practices board to refuse to grant the certificate if the facts were known at the time when the certificate was granted.

2. For incompetency, immorality, intemperance, or cruelty of the certificate holder.

3. The certificate holder has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in this or any other state, or before any federal court, of an offense determined by the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator to have a direct bearing upon a person's ability to serve the public as a teacher or administrator, or the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

4. For the refusal by the certificate holder to perform the duties of a teacher or the general neglect of the work of the school.

5. For the breach, by the certificate holder, of a contract with any school district.

6. Serious violation or a series of violations of the professional codes and standards promulgated in accordance with law.

The revocation of a certificate shall terminate the employment of the certificate holder ~~of such certificate in~~ by the school in which the holder is employed when the certificate is revoked, but the holder must be paid to the time the notice of revocation ~~was~~ is received. Appeals from any order of revocation may be taken to the district court of Burleigh County as provided by chapter 28-32.

SECTION 9. AMENDMENT. Section 15-36-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-16. Proceedings to suspend, revoke, or annul certificate. The ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board in the case of a school administrator, upon the receipt of a ~~formal~~ complaint ~~by the teachers' professional practices~~

~~commission~~ alleging grounds to suspend for a period of time, revoke, or annul any person's teacher's certificate as set forth in ~~subsections 1, 2, 4, 5, and 6 of~~ section 15-36-15, and upon the determination that sufficient evidence exists to sustain the charges in the complaint, shall conduct proceedings in accordance with chapter 28-32. ~~The superintendent of public instruction, upon receipt of a formal complaint which includes a certified copy of a criminal judgment alleging grounds for suspension or revocation of any person's teacher's certificate as set forth in subsection 3 of section 15-36-15, shall conduct proceedings in accordance with chapter 28-32.~~ Upon ~~the~~ completion of ~~such~~ the proceedings, if the ~~superintendent of public instruction shall find~~ education standards and practices board or the administrator's professional practices board finds that grounds to annul, revoke, or suspend for a period of time do exist, the ~~superintendent~~ appropriate board shall issue an order in the manner provided in chapter 28-32 to annul, revoke, or suspend for a period of time the teacher's certificate of such person as provided in section 15-36-15.

SECTION 10. AMENDMENT. Section 15-36-17 of the North Dakota Century Code is amended and reenacted as follows:

15-36-17. Notice to be given when teacher's certificate is revoked. When a teacher's certificate is revoked, the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board shall ~~cause notice to be sent immediately to~~ notify the clerk of the school board or the secretary of the board of education, as the case may be, of the district wherein the teacher is employed, and shall notify the teacher of the revocation through ~~such~~ the clerk. The ~~superintendent~~ appropriate board also shall notify each county superintendent of schools in the state and shall enter ~~his~~ an action in the case upon the records of ~~his~~ the superintendent's office. Upon ~~receipt of notice of revocation of his~~ being notified that the teacher's certificate has been revoked, the teacher or administrator shall return the certificate to the ~~superintendent of public instruction~~ appropriate board, and if the teacher or administrator neglects so to do, that the ~~superintendent~~ board may issue notice of the revocation by publication in the official newspaper of the county in which the teacher or administrator last was employed.

SECTION 11. AMENDMENT. Section 15-38-17 of the North Dakota Century Code is amended and reenacted as follows:

15-38-17. ~~Teachers' professional practices commission~~ Education standards and practices board and administrator's professional practices board. The ~~teachers' professional practices commission shall consist~~ education standards and practices board consists of nine members. The governor shall appoint four classroom teachers from public schools, ~~two~~ one classroom teacher from a private school, one school board ~~members~~ member, two school administrators, and one ~~member nominated by the state board of public school~~ dean of a college of education. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member. The administrator's professional practices board consists of five members from the education standards and practices board. The administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the one school board member who is a member of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board. The term of office of members of the ~~commission~~ education standards and practices board and the administrator's professional practices board

shall be three years commencing on ~~July~~ January first of the year of the appointment~~, except that original appointments shall be for staggered terms of one, two, and three years in order that the terms of three members of the commission shall expire each year thereafter~~. Vacancies shall be filled for an unexpired term in the same manner as original appointments. No person ~~shall~~ may serve for more than two consecutive terms as a member of ~~the commission~~ either board. For each classroom teacher vacancy on the education standards and practices board, the governor shall appoint the member from a list of three names provided by the North Dakota education association. For each administrator vacancy on either board, the governor shall appoint the member from a list of three names provided by the North Dakota council of school administrators. For each school board vacancy on the board, the governor shall appoint the member from a list of three names provided by the North Dakota school board association. For each college dean vacancy on the board, the governor shall appoint a member from a list of three names provided by the deans of colleges of education. Members of the current teachers' professional practices commission may serve out their remaining terms.

The ~~commission~~ education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice chairman, and the ~~superintendent of public instruction or his designee~~ executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings ~~shall~~ of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of ~~the commission~~ either board. A majority shall constitute a quorum and a majority of ~~such~~ the quorum shall have authority to act upon any matter properly before ~~the commission. It~~ either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of ~~the commission~~ each board shall receive twenty-five dollars for each day actually engaged in the service of the ~~commission~~ appropriate board and shall be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. No member of ~~the commission~~ either board shall lose ~~his~~ the member's regular salary or the above compensation while serving on official business of the ~~commission~~ appropriate board. The ~~superintendent of public instruction~~ office of management and budget shall approve proper vouchers for ~~such~~ expenses.

SECTION 12. AMENDMENT. Section 15-38-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-18. Duties of ~~commission and superintendent of public instruction~~ the education standards and practices board. It is the duty of the ~~commission~~ board to supervise the certification of teachers, to set standards for and approve teacher preparation programs, to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools. In the development of ~~such~~ professional codes and standards, the ~~commission~~ board shall solicit the assistance of members of the teaching profession and representatives of school administrators, school board members, teacher education professors, and other interested citizens. The ~~commission shall recommend such professional codes and standards as it may approve to the superintendent of public instruction, who after a hearing thereon~~

~~may, consistent with state law, concur or veto and return to the commission for further study the revision of such codes and standards as the superintendent of public instruction deems proper and in the best interest of the public and the profession, and thereafter~~ board shall adopt ~~such~~ approved or revised codes and standards as rules in accordance with chapter 28-32. ~~The commission shall advise the superintendent of public instruction regarding rules and regulations and procedures to be followed related to the issuance of teachers' certificates.~~ The board may enter into agreements with other states to acquire reciprocal approval of teacher preparation programs, apply for and receive federal or other funds on behalf of the state for purposes related to its duties, and to perform any other duty that relates to the improvement of instruction through teacher education, professional development, and continuing education programs. The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as the board. The venue of all actions in which the board is a party must be Burleigh County, North Dakota. The board shall appoint an executive director to serve at its discretion. The executive director shall perform the duties assigned by the board. The board shall authorize the employment of staff necessary for the sound and economic administration of its duties, responsibilities, and functions. The executive director shall hire the staff, subject to the approval of the board.

SECTION 13. AMENDMENT. Section 15-38-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-19. Complaints against teachers and school administrators. The ~~commission~~ education standards and practices board or the administrator's professional practices board shall accept ~~and investigate~~ complaints against any member of the teaching profession engaged in teaching or administration alleging a violation or violations of ~~regulations~~ rules promulgated in accordance with section 15-38-18 or alleging grounds as set forth in ~~subsections 1, 2, 4, 5, and 6 of~~ section 15-36-15. ~~Such investigations may be made upon the commission's own motion.~~ The complainant shall prepare and file a clear and concise complaint with the appropriate board. The complaint must contain a concise statement of the claims or charges upon which the complainant relies including references to the statute or rule allegedly violated. The complaint must include supporting affidavits. Upon the filing of the complaint with the appropriate board, that board shall serve a copy of the complaint and supporting affidavits upon the teacher or administrator personally or by certified mail. Within twenty days of the receipt of the complaint by the teacher or administrator, the teacher or administrator may file with the appropriate board a clear and concise answer to the complaint. The answer may include supporting affidavits. If the teacher or administrator fails to file an answer with the appropriate board, the allegations in the complaint will be deemed admitted and the appropriate board shall proceed to hold a hearing pursuant to section 15-36-16. If an answer is submitted by the teacher or administrator, the appropriate board shall hold a hearing for the purpose of reviewing and discussing the documentation submitted by the respective parties. No testimony by any witnesses may be permitted at this hearing. Following ~~such investigation~~ the hearing, the ~~commission~~ board may dismiss ~~such~~ a complaint as unfounded, issue a written warning and reprimand, or, ~~following an opportunity for such teacher to informally appear before the commission, file a formal complaint with the superintendent of public instruction requesting the suspension for a period of time, revocation or annulment of the teacher's certificate of the teacher involved and stating the reasons therefor. The commission shall make the results of its investigation fully available to the superintendent of public instruction in such~~

~~cases. Upon receipt of such formal complaint, the superintendent of public instruction shall proceed as provided in sections 15-36-16 and 15-36-17 and in accordance with section 15-36-15~~ upon the determination that sufficient evidence exists to sustain the charges, order a hearing pursuant to section 15-36-16.

SECTION 14. AMENDMENT. Section 15-47-28 of the North Dakota Century Code is amended and reenacted as follows:

15-47-28. Suspension of teacher's certificate for breach of contract. In the event of breach of contract on the part of a teacher or administrator, the ~~superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board shall suspend ~~such~~ a teacher's certificate for a period not to exceed one year, during which time it shall be unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota.

SECTION 15. AMENDMENT. Section 15-47-30 of the North Dakota Century Code is amended and reenacted as follows:

15-47-30. Suspension and revocation of teachers' certificates for wearing religious garb. Any public school teacher or administrator who ~~shall violate any of~~ violates the provisions of section 15-47-29 shall have ~~his or her~~ the teacher's certificate suspended by the ~~state superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board for one year, and upon the conviction of ~~such~~ the teacher or administrator for a second such offense, ~~his or her~~ the teacher's certificate ~~shall~~ must be permanently revoked and annulled by the ~~state superintendent of public instruction~~ education standards and practices board or the administrator's professional practices board as provided by law.

SECTION 16. AMENDMENT. Subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07~~, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18~~.

SECTION 17. AMENDMENT. Subsection 1 of section 54-07-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:

   a. The aeronautics commission.

   b. The milk stabilization board.

   c. The dairy promotion commission.

   d. The state banking board.

e. The state credit union board.

f. The advisory board of directors to the Bank of North Dakota.

g. The board of pardons.

h. The state parole board.

i. The state board of public school education.

j. The ~~teachers' professional practices commission~~ education standards and practices board and the administrator's professional practices board.

k. The board of trustees for the teachers' fund for retirement.

l. The educational telecommunications council.

m. The state game and fish advisory board.

n. The health council.

o. The air pollution control advisory council.

p. The board of animal health.

q. The administrative committee on veterans' affairs.

r. The governor's council on human resources.

s. The North Dakota council on the arts.

t. The state historical board.

u. The Yellowstone-Missouri-Fort Union commission.

v. The state water commission.

w. The state water pollution control board.

SECTION 18. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $4,500, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of funding teacher certification and all other duties of the education standards and practices board for the period beginning January 1, 1995, and ending June 30, 1995.

SECTION 19. EFFECTIVE DATE. Sections 11, 12, and 18 of this Act become effective on January 1, 1995, and sections 1 through 10 and 13 through 17 become effective on July 1, 1995.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 172

SENATE BILL NO. 2127
(Education Committee)
(At the request of the State Board of Vocational Education)

EDUCATION BOARD JOINT MEETINGS

AN ACT to amend and reenact section 15-21-18 of the North Dakota Century Code, relating to joint meetings between the state board of higher education and the state board of public school education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-21-18 of the North Dakota Century Code is amended and reenacted as follows:

15-21-18. Joint meetings of board of higher education, state board for vocational and technical education, and state board of public school education. The state board of higher education, and the members of the state board ~~of public school~~ for vocational and technical education in their capacity as both the state board for vocational and technical education and the state board of public school education, shall hold at least one joint meeting each year at the joint call of the director for vocational and technical education, the superintendent of public instruction, and the commissioner of higher education for the purpose of coordinating their programs and ~~specifically considering matters in relation to teacher training, teaching standards, and teacher certification~~ cooperating in any manner that accomplishes the objectives of the three boards involved.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 173

SENATE BILL NO. 2215
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SUPERINTENDENT RULEMAKING

AN ACT to create and enact a new section to chapter 15-22 of the North Dakota Century Code, relating to the rulemaking authority of the superintendent of public instruction; and to amend and reenact section 15-22-25 and subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to counties sharing a common county superintendent of schools and rulemaking authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-22-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-22-25. Biennial plan required - Two or more counties may have a common county superintendent of schools - Appeals.

1. The board of county commissioners of two or more counties may agree to jointly employ a county superintendent of schools to perform the functions of the office for the counties involved. Any county which has less than one thousand persons over five and under eighteen years of age, as determined by the superintendent of public instruction for the previous school year, must combine with another county or counties for the purpose of jointly employing a county superintendent of schools. The board of county commissioners of such a county shall develop a plan to cooperate with another county or counties to employ a county superintendent of schools. If the board of county commissioners of each county cannot agree to share a county superintendent of schools, the superintendent of public instruction may require a county to participate in a plan to jointly employ a county superintendent of schools. Any plan to share a county superintendent of schools must be approved by a majority of the presidents of the school boards of each county affected by the plan and must be confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in each county cannot agree to the plan, both the presidents of the school boards of the counties affected and the boards of county commissioners of the counties affected shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent may be appealed as provided in subsection 3. The plan must describe the amount and quality of educational services to be provided to school districts in the counties by the county superintendent of schools. The plan must be reviewed, and amended if necessary, by the boards of county commissioners and submitted to the presidents of the school boards for approval and to the superintendent of public instruction for confirmation biennially. The superintendent of public instruction may exempt a county from jointly

employing a county superintendent of schools if the superintendent determines that, due to the geographic size of the county or the duties required of the county superintendent of schools in that county, sharing a county superintendent of schools would not be feasible. Each county jointly employing a county superintendent of schools must share the salary and other expenses attributable to the county superintendent of schools. ~~The costs must be apportioned among the counties sharing the county superintendent of schools based on the number of persons over five and under eighteen years of age in each county~~ according to the approved biennial plan.

2. The board of county commissioners of any county that elects not to share a county superintendent of schools with another county, or that has been exempted from sharing a county superintendent of schools by the superintendent of public instruction, must submit a plan biennially to the school boards of the school districts located within the county. The plan must describe the amount and quality of educational services to be provided to school districts in the county by the county superintendent of schools. The plan is approved if a majority of the presidents of the school boards in the county approve the plan and the plan is confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in the county cannot agree to the plan, both the presidents of the school boards and the board of county commissioners shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent of public instruction may be appealed as provided in subsection 3.

3. If the superintendent of public instruction does not confirm a plan that has been approved locally, the superintendent of public instruction shall submit the plan to the state board of public school education for final resolution. A majority of the presidents of the school boards in a county or a board of county commissioners aggrieved by a decision of the superintendent of public instruction may appeal the decision to the state board of public school education. A decision of or resolution by the state board of public school education under this section is final. The superintendent of public instruction may not serve on the board when the board is resolving disputes under this section.

SECTION 2. A new section to chapter 15-22 of the North Dakota Century Code is created and enacted as follows:

Superintendent may make rules. The superintendent of public instruction may adopt rules for implementing the purposes of this chapter.

[1] **SECTION 3. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules implementing chapter 15-22,

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[1] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1264, 1336, and 1400 and Senate Bill No. 2228, chapters 135, 186, 328, 327, 80, and 236.

rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 174

SENATE BILL NO. 2186
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT REORGANIZATION

AN ACT to create and enact section 15-27.3-01.1 of the North Dakota Century Code, relating to the authority of school districts or parts of school districts to reorganize; to amend and reenact sections 15-27.1-06, 15-27.3-02, 15-27.3-05, subsection 2 of section 15-27.3-11, and section 15-27.3-16 of the North Dakota Century Code, relating to comprehensive county plans for the reorganization of school districts; and to repeal sections 15-27.3-01 and 15-27.3-03 of the North Dakota Century Code, relating to the submission to the state board of public school education of comprehensive county plans for the reorganization of school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-06. State board - Powers and duties. The state board shall:

1. Aid county committees in carrying out their powers and duties under this chapter and chapters 15-27.2, 15-27.3, and 15-27.4 by furnishing them, with the assistance of the employed staff of the state committee, with other necessary clerical assistance, and with necessary plans of procedure, standards, data, maps, forms, and other materials and services.

2. ~~Receive, file, and examine plans and data for the reorganization of school districts submitted by county committees, and shall approve such plans and data when they are found by the state board to provide for a satisfactory school district system for the counties and the state and for an equitable adjustment of property, debts, and liabilities. Whenever a plan submitted by a county committee is found by the state board to be unsatisfactory, or whenever the terms of adjustment so submitted are found not to be fair and equitable, the state board shall so notify the county committee and upon request shall assist the county committee in the revision of the plan or terms of adjustment, which revision shall be completed by the county committee and resubmitted within ninety days after such notification.~~

~~3.~~ Appoint a county committee, in case no county committee is appointed, as required in section 15-27.1-03~~, or in case a committee so elected fails or refuses to submit plans, records, reports, and other data as provided for in this chapter.~~

~~4. Transmit to the county superintendent of each county affected a copy of the plan for reorganization of school districts approved by the state board; a copy of approved terms of adjustment of property, debts, and~~

~~liabilities; a statement of the findings and conclusions of the state board respecting such approved plans and terms of adjustment; and copies of maps, reports, records, and all other pertinent material submitted to the state board by the county committee~~.

~~5.~~ 3. Establish standards by the adoption of rules to govern the county committees and state board in the development and approval of ~~school district reorganization plans or~~ reorganization, annexation, and dissolution proposals. The standards must require any school district to be formed under any ~~plan or~~ proposal providing for the operation of a high school to have sufficient tax base and fiscal capacity to clearly permit the district to offer the minimum curriculum prescribed by section 15-41-24 taught by teachers possessing the qualifications required by section 15-41-25. Exceptions to the standards may be allowed by a county committee or the state board only in extreme cases where because of sparsity of population or geographical barriers it is impossible to obtain compliance with them.

SECTION 2. Section 15-27.3-01.1 of the North Dakota Century Code is created and enacted as follows:

15-27.3-01.1. School district reorganization. School districts or parts of school districts may reorganize under this chapter.

SECTION 3. AMENDMENT. Section 15-27.3-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-02. Proposal involving territory in more than one county. If the school districts involved in a reorganization proposal are situated in more than one county, a special committee composed of not fewer than three members of each of the county committees of the counties encompassing the major portion of each school district shall prepare a proposal for the reorganization of the school districts. The proposal must be submitted to each county committee for its approval. If the reorganization proposal is approved by a majority of the members of one of the two county committees, or the members of one or more of the special committees fail or refuse to meet with the committee or committees from other counties, the county superintendent of the county in which the largest number of pupils who would be affected by the proposed new district reside shall submit the reorganization proposal to the state board for approval or disapproval. Approval of the reorganization proposal by the state board has the same effect as approval by all the county committees. If the reorganization proposal fails to receive the approval of any county committee, it may not be presented to the state board for review. If the school districts are situated in more than one county but the major portions of both such school districts are situated in the same county, the county committee of that county shall consider the matter.

SECTION 4. AMENDMENT. Section 15-27.3-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-05. Public hearing on proposals for reorganization - Hearing testimony for adjusting. The county committee shall hold a public hearing on the advisability of any reorganization proposal ~~by the committee for the reorganization of school districts~~. Notice of hearings must be given by publishing a notice in the official county newspaper at least fourteen days prior to the date of each hearing.

If the county committee fails to call a hearing or to give the required public notice, a petition signed by twenty-five percent of the qualified electors in the area proposed to be included in the new school district and presented to the committee makes it mandatory for a hearing to be called. Notice of the hearing must be published within ten days after the petition has been filed, and must set forth the date selected for the hearing, which may not be more than twenty days after the date of publication. The county committee shall also hear at such time as may be fixed by it, testimony offered by any person or school district interested in ~~any~~ the reorganization proposal ~~of the county committee~~. The testimony and documentary evidence considered by the county committee must include any information regarding the following factors:

1. The value and amount of all school property of whatever nature involved in the proposed action.

2. The nature, amount, and value of all bonded, warrant, and other indebtedness of each school district affected by the proposed action, including all unexecuted obligations with separate consideration given to the amount of outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements in order that an equitable adjustment of all property, debts, and liabilities among the districts involved be made.

3. The taxable valuation of the existing districts and the differences in such valuation which would accrue under a proposed reorganization.

4. The size, geographical features, and boundaries of the districts.

5. The number of pupils attending school and the population of the districts.

6. The location and condition of the districts' school buildings and their accessibility to affected pupils.

7. The location and condition of roads, highways, and natural barriers within the respective districts.

8. The school centers where children residing in the districts attend high school.

9. Conditions affecting the welfare of the teachers and pupils of the involved districts.

10. The boundaries of other governmental units and the location of private organizations in the territories of the respective districts.

11. The educational needs of local communities in the involved districts.

12. An objective in economizing in the use of transportation and administrative services.

13. Projected future use of existing satisfactory school buildings, sites, and playfields in the involved districts.

14. A reduction in disparities in per-pupil valuation between school districts and the objective of equalization of educational opportunities for pupils.

15. Any other relevant factors which, in the judgment of the county committee, are of importance.

Following the county committee's consideration of testimony and documentary evidence with respect to the factors listed in subsections 1 through 15, the committee shall make specific findings with reference to those factors to which testimony or documentary evidence was directed in proceedings before the committee.

The county committee shall keep a record of ~~all hearings~~ the hearing on the reorganization of school districts and of all findings and terms of adjustment of property, debts, and liabilities among the districts involved, and shall submit the same to the state board at the time of submitting ~~a plan as provided in subsection 2 of section 15-27.3-01~~ the reoganization proposal for state board approval. A subcommittee composed of not fewer than three members of a county committee, or three members of the county committee of each county concerned in case territory in two or more counties is involved, may hold any hearing that the county committee is required to hold.

SECTION 5. AMENDMENT. Subsection 2 of section 15-27.3-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. If the boundaries of the proposed new district, the terms of adjustment, or the proposed mill levy, as the case may be, as revised, are approved by the state board, notice thereof shall be transmitted to the county superintendent~~, as provided for in section 15-27.1-06~~.

   b. Upon receipt of such notice the county superintendent shall call, in the manner and for the purpose specified in section 15-27.3-08, a special election of the voters residing within the revised boundaries of the proposed new district.

SECTION 6. AMENDMENT. Section 15-27.3-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-16. ~~Voluntary proposals~~ Proposals **for the reorganization of school districts.** Proposals for the reorganization of school districts must be submitted by the county committee to the state board for final approval:

1. After a hearing on the reorganization proposal is held by the county committee; and

2. For approval before proposals are submitted to a vote of the electors.

~~Reorganization proposals may be approved by the county committee and approved by the state board, if in the judgment of the county committee and the state board, the proposals constitute an acceptable part of the comprehensive reorganization plan submitted pursuant to section 15-27.3-01 for the reorganization of the school districts of the county.~~

SECTION 7. REPEAL. Sections 15-27.3-01 and 15-27.3-03 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 175

SENATE BILL NO. 2185
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT WITHOUT SCHOOL

AN ACT to amend and reenact section 15-27.1-11 of the North Dakota Century Code, relating to the time within which a school district not operating a school must reorganize, annex, or dissolve.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.1-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-11. Reorganization, annexation, or dissolution of school district not operating a school - Transportation. ~~Any school district in this state which is not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, and any school district that may cease to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall become, through the process of reorganization, annexation, or dissolution as provided by law, a part of a school district operating an approved elementary or high school. Any school district not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization with or annexation to an operating school district by July 1, 1989. Any school district that ceases to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization or annexation within two years from the date the school district ceased to operate either an approved elementary or high school.~~ Any school district that, for a period of one year, does not operate either an elementary or high school, must become by the end of that year, through the process of reorganization, annexation, or dissolution, part of a school district operating an approved elementary or high school. Any student who resides within a school district which is annexed to or reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01, ~~and which~~ whose school district has been sending the students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09. The students ~~in any~~ residing within a school district that is ~~attached by annexation, reorganization, or dissolution~~ annexed to or reorganized with another district or districts pursuant to this section, or dissolved pursuant to this section and section 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by this section ~~and section 15-27.4-01,~~ which school district does not reorganize or annex itself to an operating school district within the time limit prescribed in this section ~~and section 15-27.4-01,~~ shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4. ~~This section does not apply to school districts established pursuant to chapter 15-27.5.~~

This section does not apply to school districts established pursuant to chapter 15-27.5.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 176

SENATE BILL NO. 2188
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT ANNEXATION PETITIONS

AN ACT to amend and reenact sections 15-27.2-01 and 15-27.2-02 of the North Dakota Century Code, relating to school district annexation petitions and requirements for an annexation involving an exchange of property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.2-01. Annexation of contiguous territory to school district - Petition.

1. Territory contiguous to a public school district, whether in the same county or in another, may be annexed to the school district by the county committee after a public hearing upon written petition signed by two-thirds of the residents of the contiguous territory who are qualified electors ~~in the contiguous territory~~. The county committee shall determine the sufficiency of the petition and the required number of electors necessary to constitute a two-thirds majority.

2. The annexation petition must:

   a. Be obtained from the county superintendent;

   b. Identify all of the land area to be annexed before it is circulated;

   c. Be signed in the presence of the carrier of the petition; and

   d. Be submitted to the county superintendent of the county in which the majority of land identified in the petition is located.

3. After the annexation petition is submitted to the county superintendent, names may be added to or removed from the petition until five p.m. on the day before the hearing before the county committee. A person who requests that person's name to be added to or removed from the petition must do so in person before the county superintendent.

4. This section does not apply to annexations involving an exchange of property pursuant to section 15-27.2-02.

SECTION 2. AMENDMENT. Section 15-27.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.2-02. Restricted changes in boundaries - Petition - Requirements - Appeal. A resident or residents of a school district may request annexation of the property upon which his or their residence is situated to an adjacent school

district by a petition for an exchange of property between the district of residence and the adjacent district under the following conditions:

1. The signer of the petition must reside upon the property which is requested to be annexed to the adjacent district. If there are other residences in the area sought to be annexed, a resident representing each of those residences must also approve the exchange of property and sign the petition.

2. There is an agreement for the exchange of property between the petitioners and the owner of the property in the adjacent district which property is to be exchanged for the property ~~of~~ identified in the ~~petitioner~~ petition and the owner of the property in the adjoining district need not reside on the property exchanged in order to enter into the agreement.

3. The school boards of the districts involved approve the exchange of property.

4. The difference in taxable valuation of the property involved in the exchange does not exceed one thousand dollars.

5. The properties involved in the exchange must be contiguous to the school district to which each is sought to be annexed.

Except as provided in this section, the proceedings in this section are subject to the other provisions of this chapter applicable to annexation proceedings generally. Approval of the annexation petition by the county committee and the state board must contain a finding that the requirements in this section have been met. Any school board aggrieved by the decision of another school board not to approve the exchange of property may appeal the decision to the county committee and, if aggrieved by the decision of the county committee, may appeal the decision of the county committee to the state board.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 177

SENATE BILL NO. 2183
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT DISSOLUTION HEARING

AN ACT to amend and reenact subsection 8 of section 15-27.4-02 of the North Dakota Century Code, relating to the holding of a hearing by the state board under certain circumstances when a school district must be dissolved.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 15-27.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. If the county committees cannot agree upon an order attaching the territory to adjoining districts, the county superintendent of the county in which the majority of the district being dissolved is located shall submit the dissolution and attachment to the state board, and in such instance the state board shall, after holding a hearing such as the one described in subsections 1 and 2, dissolve and attach the district to be dissolved, or the unorganized territory, in the manner as will, in its judgment, provide the best educational opportunities for pupils of the public school system in the school districts and attached territories.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 178

HOUSE BILL NO. 1159
(Education Committee)
(At the request of the Superintendent of Public Instruction)

ANNEXED OR DISSOLVED SCHOOL DISTRICT FUNDS

AN ACT to amend and reenact subdivision a of subsection 6 of section 15-27.2-04 and section 15-27.4-03 of the North Dakota Century Code, relating to a credit to owners of property in annexed or dissolved school districts for an unobligated cash balance in excess of ten thousand dollars not designated for indebtedness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 6 of section 15-27.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. If the annexation is approved by the state board, the county committee may cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness is a credit for those who own property within the annexed school district against taxes levied by the receiving school district in the year or years following the annexation ~~depending on the average local effort~~ based on the previous five-year average of the total mills levied for education by the district being annexed, as calculated by the county ~~superintendent~~ auditor. If a school district is attached to more than one school district, the credit that those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to annexation.

SECTION 2. AMENDMENT. Section 15-27.4-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.4-03. Unobligated cash balance of dissolved school district - Tax credits. The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for those who own property within the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution ~~depending on the average local effort~~ based on the previous five-year average of the total mills levied for education by the district being annexed, as calculated by the county ~~superintendent~~ auditor. If a school district is dissolved and attached to more than one school district, the credit that those who own property within the attached school district

receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 179

SENATE BILL NO. 2184
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT REORGANIZATION AND RESTRUCTURING

AN ACT to amend and reenact section 15-27.3-08, subsection 3 of section 15-27.3-11, and subsections 2 and 3 of section 15-27.6-10 of the North Dakota Century Code, relating to the manner of voting to approve a proposal for the reorganization of school districts and school district boundary restructuring; and to repeal section 15-27.3-09 of the North Dakota Century Code, relating to the voting of reorganized school districts as separate voting units when voting on a proposal for the reorganization of school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.3-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-08. Approved proposal received by county superintendent - Duty of superintendent to call special election - ~~Definition of voting units - Favorable results~~ Formation of new district.

1. a. Upon receipt from the state board of an approved proposal for the reorganization of school districts, and approved terms of adjustment of property, debts, and liabilities among the districts involved, the county superintendent shall call a special election of the voters residing within the territory of the proposed new district.

   b. The election must be held at the place or places in the territory which have been determined by the county superintendent to be convenient for the voters.

   c. The special election must be held after July first and no later than December thirty-first of the year in which the approved proposal is received unless there are not sufficient business days left in that year to accomplish the required publication of notice, in which event the special election must be held the following year.

2. ~~a. In holding the election, all existing districts within the proposed new district containing one or more incorporated cities regardless of number or size vote as a single unit, and all existing districts within the proposed new district regardless of number or size which do not contain one or more incorporated cities vote as a single unit.~~

   ~~b. For the purposes of this section, all districts containing incorporated cities are considered an incorporated area, and all districts which do not contain at least one incorporated city are considered an unincorporated area.~~

~~3.~~ a. Notice of the election, stating the time and place of holding the election, must be published by the county superintendent in the official county newspaper at least fourteen days before the election.

b. The election notices shall clearly state that the election has been called for the purpose of affording the voters an opportunity to approve or reject a proposal for the formation of a new school district and must also contain a description of the boundaries of the proposed new district, a statement, if any, of the terms of adjustment of property, debts, and liabilities applicable to the proposal, and the proposed tax levy.

~~4.~~ 3. The county superintendent shall appoint judges and clerks of the elections and the election shall be held and conducted in the same manner and the polls shall open and close at the same time as specified for elections in public school districts.

~~5.~~ 4. The result of the elections must be certified and delivered to the county superintendent within three days after the closing of the polls.

~~6.~~ 5. If a majority of ~~all votes cast by the~~ electors residing within ~~the unincorporated area of a proposed new district and the majority of all votes cast by the electors within the incorporated area of a proposed new district are both~~ each school district vote in favor of the formation of the district, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the approved proposal and shall organize and establish such districts and in so doing shall perform all other necessary duties that are required by law to be performed by the county superintendent in connection with the organization and establishment of new school districts of any kind or type.

SECTION 2. AMENDMENT. Subsection 3 of section 15-27.3-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If a majority of ~~all votes cast by the~~ electors residing within ~~the unincorporated area of a proposed new district and a majority of all votes cast by electors within the incorporated area of the proposed new district are both~~ each school district vote in favor of the formation of the district, the county superintendent shall proceed to organize and establish the district and to perform the necessary duties related thereto in the same manner and to the same effect as is provided in section 15-27.3-08.

[1] **SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent

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[1] NOTE: Section 15-27.6-10 was also amended by section 2 of House Bill No. 1413, chapter 184; by section 16 of House Bill No. 1003, chapter 3; and by section 6 of Senate Bill No. 2528, chapter 182.

shall make the proper adjustments and perform all necessary duties as provided in subsection ~~6~~ 5 of section 15-27.3-08.

3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district if the new district would qualify to receive the payments provided for in section 15-27.6-11 and if approved by the state board. Any contiguous districts voting in favor of forming a new district, but that would not qualify for payments under section 15-27.6-11, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06 and submit a new proposal to the state board for approval. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection ~~6~~ 5 of section 15-27.3-08.

SECTION 4. REPEAL. Section 15-27.3-09 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 180

HOUSE BILL NO. 1184
(Education Committee)
(At the request of the Superintendent of Public Instruction)

TRANSPORTATION AID FOR FAMILY TRANSPORTATION

AN ACT to amend and reenact sections 15-27.3-10, 15-34.2-01, 15-34.2-03, 15-40.1-16, 15-40.1-16.1, and 15-47-02.1 of the North Dakota Century Code, relating to state aid and school district payments for family-type transportation; and to repeal sections 15-40.1-16.2 and 15-40.1-16.3 of the North Dakota Century Code, relating to state aid to school districts for family-type transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.3-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-10. Transportation required. A reorganization proposal must provide for the transportation of students and must specify if family-type or public schoolbus-type of transportation shall be used, and if the proposal is approved by the voters of the new district, then the school board of the district shall provide adequate and practical transportation of the type specified, except that if family-type transportation is specified, the school board may later substitute public schoolbus-type transportation. A reorganized school district ~~is not bound by the schedule of payments or limitations provided in section 15-34.2-03, and~~ shall establish a schedule of transportation payments as is proper under the circumstances affecting that district, but the ~~newly established~~ schedule of payments may not be less than the ~~amounts specified in section 15-34.2-03~~ amount determined under subsection 2 of section 15-40.1-16 for state aid for family-type transportation.

SECTION 2. AMENDMENT. Section 15-34.2-01 of the North Dakota Century Code is amended and reenacted as follows:

15-34.2-01. Vehicular transportation or lodging may be furnished at option of school board. The school board of any school district in the state, in its discretion, may furnish to each family living in the district:

1. Vehicular transportation; or
2. The equivalent of the payments ~~specified in~~ received from the state as determined under subsection 2 of section ~~15-34.2-03~~ 15-40.1-16, in lodging at some other public school if the same is acceptable to the family.

The board shall not accord the benefits of either subsection 1 or subsection 2 to any family which is receiving payments under section 15-34.2-03. In the event any school board elects to furnish vehicular transportation by public conveyance, the distance that each student must reside from ~~his~~ the school in order to be entitled to such transportation may be determined by the school board in each district, but

all students in the district shall be treated on the same basis in accordance with such determination. The furnishing of benefits under this chapter may be extended to families living in the district for the purpose of transporting students to another school district or county agricultural and training school within the state, or another school district outside the state, if the attendance of such students in the other districts is in accordance with the provisions of this title governing the same.

SECTION 3. AMENDMENT. Section 15-34.2-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.2-03. Transportation - Payment optional with school board ~~- Schedule~~. The school board of any school district in the state may pay to each family living more than two miles [3.22 kilometers] from a school in the district which is taught the required length of time, a reasonable sum per day for each day's attendance of a student or students of such family, when transported by a member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school~~, at the rate of twenty cents per day for each one-half mile [.80 kilometer] over two miles [3.22 kilometers]~~. Such distance must be measured by the route from the front door of the ~~nearest operating~~ school attended to the front door of the family's residence according to the most convenient public course of travel. ~~Payments for transportation shall not be limited to the amount set forth in this section where the student or students are required to be transported to another school because the school which they had been attending is closed.~~

SECTION 4. AMENDMENT. Section 15-40.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-40.1-16. Aid for transportation.**

1. There shall be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school within the incorporated limits of a city, the following amounts:

~~1.~~ a. For schoolbuses and school vehicles transporting pupils who live outside the incorporated limits of the city in which school the pupil is enrolled is located, a sum equal to twenty-five cents per mile [1.61 kilometers] during each year of the 1991-93 biennium for vehicles having a capacity of nine or fewer pupils and sixty-seven cents per mile [1.61 kilometers] for each year of the 1991-93 biennium for schoolbuses having a capacity of ten or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of ten or more pupils are entitled to an amount equal to twenty-eight cents per day for each public school pupil living outside the city limits who is transported in such buses.

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[1] NOTE: Section 15-40.1-16 was also amended by section 23 of House Bill No. 1003, chapter 3.

~~2.~~ b. For pupils who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to seventeen and one-half cents per pupil per one-way trip. However, no payment shall be made under this ~~subsection~~ subdivision for a student who rode on a vehicle for which payments are claimed under ~~subsection 1~~ subdivision a.

The mileage payments provided for in this ~~section~~ subsection shall be made to each school district for transporting pupils to and from school. Such payments shall be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to the compliance with the laws of this state in regard to schoolbuses and their drivers shall be made in such manner and in such detail as the superintendent of public instruction may require at the time an application is made for payments provided under this ~~section~~ subsection.

2. For pupils transported by family transportation in accordance with section 15-34.2-03, the state shall reimburse school districts in an amount determined by using the rate of forty cents per day for each mile [1.61 kilometers] over two miles [3.22 kilometers] according to the distance between the student's home and the school. Such distance must be measured by the route from the front door of the school attended to the front door of the family's residence according to the most convenient public course of travel.

3. The superintendent of public instruction shall administer the reimbursement provided for and shall prepare all forms and statements that may be necessary for school district to apply for the same.

SECTION 5. AMENDMENT. Section 15-40.1-16.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **15-40.1-16.1. Transportation aid for certain vocational education and special education programs.** There must be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of vocational education. ~~Such~~ That amount must be the same amount for mileage and per day as is provided in subdivision a of subsection 1 of section 15-40.1-16. Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.

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[2] NOTE: Section 15-40.1-16.1 was also amended by section 9 of House Bill No. 1156, chapter 62.

2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

School districts entitled to transportation aid pursuant to this section ~~shall~~ must receive ~~such~~ aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether ~~or not such~~ the pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. ~~Provided, however, that~~ However, no school district may receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day. Notwithstanding any other provisions of this section, the superintendent of public instruction shall, upon request, make the payments under this section ~~which~~ that are due to school districts participating in area vocational and technology centers or multidistrict special education programs, for the transportation of pupils in those centers and programs, directly to the respective area vocational and technology centers or multidistrict special education programs.

SECTION 6. AMENDMENT. Section 15-47-02.1 of the North Dakota Century Code is amended and reenacted as follows:

15-47-02.1. Discontinuance of schools by school board. Any elementary or high school may be discontinued by action of the school board when proper and convenient school facilities for the pupils can be provided in some other public school. In determining what constitutes proper and convenient school facilities, the board shall consider the distance of each child from the nearest other school and all surrounding circumstances. The board may furnish transportation to the nearest school, or may pay ~~an extra allowance over and above the schedule of payments provided for~~ a reasonable sum as indicated in section 15-34.2-03 for transportation provided by the family, or may furnish ~~the equivalent thereof in~~ tuition or lodging at some other public school in the equivalent of the payments received from the state as determined under subsection 2 of section 15-40.1-16. In case of a dispute between a parent or guardian of a pupil of the school district and the board as to whether the board has furnished or arranged to furnish adequate facilities, the matter may be submitted by such parent or guardian to the board of arbitration consisting of the county superintendent of schools, one arbitrator named by the parent or guardian, and one arbitrator named by the board, and the determination of the arbitrators, after hearing, shall be binding.

SECTION 7. REPEAL. Sections 15-40.1-16.2 and 15-40.1-16.3 of the North Dakota Century Code are repealed.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 181

SENATE BILL NO. 2497
(Senator Heinrich)
(Representative Gates)

SCHOOL DISTRICT DISSOLUTION

AN ACT to amend and reenact section 15-27.4-01 of the North Dakota Century Code, relating to the dissolution of public school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.4-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.4-01. Dissolution of public school districts - Responsibility of county committee - Duty of county superintendent. The county committee shall ~~forthwith~~ schedule and provide notice of a public hearing to dissolve a school district and attach the territory to other school districts upon the following occurrences:

1. Receipt by the county committee of notice from the county superintendent that:
   a. A school district can no longer levy sufficient taxes to carry on normal school operations;
   b. A school district within the county has not operated a school as is required by section 15-27.1-11;
   c. There exists territory not organized into a school district; ~~or~~
   d. Any portion of a school district within the county has been severed from the district by the expansion and growth of a city and the severed portion is not contiguous with the district; or
   e. The school district has determined that it is in the best interests of its students to dissolve and become attached to surrounding school districts.
2. When any portion of a school district has been left out of a school district reorganization, the county committee shall, within forty-five days after voter approval of the school district reorganization proposal, order a hearing pursuant to section 15-27.4-02 for the purpose of determining to which school district or districts the remaining territory should be attached.

After approval by the state board of the proposed dissolution, the county committee shall provide for the attachment of the territory of the dissolved district to one or more adjoining school districts effective July first next following the approval unless another effective date is provided for by the county committee. Qualified electors residing in the attached territory are entitled to vote and hold office in the school district to the same extent as all other qualified electors residing in

the district, and the territory is part of the school district as fully in every respect as if it had been included in the district when organized. This section does not prevent the district from providing for the education of the children to the extent that its current budget in the judgment of the school board will permit, or relieve the district from any existing responsibility for the education of children attending its schools before the effective date of the order. This section does not change the effect of any election held within the school district pursuant to chapter 15-48 before the effective date of the order.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 182

SENATE BILL NO. 2528
(Senators O'Connell, Evanson, Heinrich)
(Representatives Ring, Porter)

SCHOOL DISTRICT BOUNDARY CHANGES

AN ACT to create and enact sections 15-27.6-02.5, 15-27.6-06.5, and a new section to chapter 15-27.6 of the North Dakota Century Code, relating to school district boundary restructuring; and to amend and reenact section 15-27.6-01, subsection 7 of section 15-27.6-04, sections 15-27.6-05, 15-27.6-10, and 15-27.6-11 of the North Dakota Century Code, relating to school district boundary restructuring.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.6-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.6-01. School district restructuring - Rules. The superintendent of public instruction, with assistance from the state board of public school education, shall adopt rules under chapter 28-32 for the purpose of administering planning grants and supplemental payments to contiguous school districts or parts of school districts for the purposes of planning and implementing the restructuring of school district boundaries for the purpose of increasing the educational opportunities of students and the sharing of school administrators. The superintendent of public instruction, if requested, shall provide assistance to school districts in the development and implementation of a plan for the restructuring of contiguous school districts. The superintendent of public instruction may provide other services if requested by the school districts. ~~The plan and any subsequent amendments must be adopted by a majority vote of the membership of each of the participating school boards and the state board of public school education prior to becoming eligible to receive supplemental pupil payments.~~

SECTION 2. Section 15-27.6-02.5 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

15-27.6-02.5. Preliminary plan - One or more reorganized districts. The preliminary plan may contemplate the restructuring of the participating school districts into more than one reorganized district. However, each proposed reorganized district must meet the requirements of subdivision a of subsection 1 of section 15-27.6-11. If the preliminary plan contemplates the formation of more than one reorganized district, each proposed reorganized district shall form its own interim district board and shall proceed in accordance with this chapter.

SECTION 3. AMENDMENT. Subsection 7 of section 15-27.6-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Review the plan annually and ~~propose necessary amendments to~~ submit second-year and third-year plans to the state board for approval after the

plans are adopted by the member school districts ~~and to the state board of public school education for adoption~~ by a majority vote ~~of each body~~.

SECTION 4. AMENDMENT. Section 15-27.6-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-27.6-05. State aid - Planning grants - Supplemental pupil payments.**

1. Payments for approved planning grants must be made quarterly for a period not to exceed one year.

2. Each interim district board is entitled to receive state aid for a period not to exceed three years in ~~the~~ an amount ~~of from~~ between one hundred twenty-five ~~to~~ and one hundred sixty-five dollars for each full-time equivalent pupil in average daily membership the previous year in the participating school districts, except as provided in subsection 3. An interim district board's second-year and third-year plans must be approved by the state board before supplemental payments for those years may be received. The interim district board ~~shall have the option to~~ may receive the amount equivalent to its third-year payment over a two-year period. This extended payment request must be contained in the consortium's third-year cooperative plan. The superintendent of public instruction shall distribute the payments to the interim district boards in the ~~same~~ manner provided in section 15-40.1-05 for the distribution of payments to school districts. Prior to being entitled to the maximum payment under this subsection, a participating school district must have one or more administrators jointly assigned and the participating districts' plan must ~~be attempting~~ attempt to improve the quality of instruction as determined by the superintendent of public instruction.

3. If a participating group of school districts includes one or more districts having an average daily membership in excess of one thousand for the previous year, supplemental payments must be determined by this subsection. The number of students attending districts having average daily memberships of one thousand or less must be multiplied by an amount between one hundred twenty-five and one hundred sixty-five dollars. An additional fifteen percent of that total must be added for each participating school district having an average daily membership in excess of one thousand for the previous year.

SECTION 5. Section 15-27.6-06.5 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

15-27.6-06.5. Formation of additional consortia.

1. While receiving supplemental payments pursuant to section 15-27.6-05, participating school districts may depart from the existing consortium, form another interim board, and proceed as a separate consortium, provided:

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[1] NOTE: Section 15-27.6-05 was also amended by section 1 of House Bill No. 1413, chapter 184.

a. The new consortium and the remaining consortium meet the requirements of subdivision a of subsection 1 of section 15-27.6-11;

b. All the school districts participating in the original consortium continue to follow the annual plan in effect at the time the determination is made to form a separate consortium; and

c. All the school boards participating in the original consortium agree to the separation.

2. For purposes of this chapter, a consortium that forms its own interim district board and separates from an original consortium is deemed to have formed at the time the interim board of the original consortium was formed.

SECTION 6. AMENDMENT. Section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **15-27.6-10. Approved proposal received by county superintendent - Special election called - Formation of new district.**

1. Upon receipt from the state board of an approved proposal for the reorganization of school districts, the county superintendent, after consulting with the interim district board, shall call a special election as provided in section 15-27.3-08.

2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 6 of section 15-27.3-08.

3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district ~~if the new district would qualify to receive the payments~~ provided ~~for in section 15-27.6-11 and if approved by~~ the state board approves and:

a. There are three districts, at least one of which offers grades one through twelve, they have a minimum combined enrollment of six hundred students, and they cover a minimum combined area of seven hundred square miles [181299.168 hectares]; or

b. There are four or more districts, at least one of which offers grades one through twelve, and they have a minimum combined enrollment of six hundred students or they cover a minimum combined area of seven hundred square miles [181299.168 hectares].

Any contiguous districts ~~voting~~ that vote in favor of forming a new district, but that ~~would not qualify for payments under section 15-27.6-11~~ do not meet the requirements of either subdivision a or b of

[2] NOTE: Section 15-27.6-10 was also amended by section 2 of House Bill No. 1413, chapter 184; by section 3 of Senate Bill No. 2184, chapter 179; and by section 16 of House Bill No. 1003, chapter 3.

this subsection, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06, hold a hearing similar to the one described in section 15-27.6-07, and submit a new proposal to the state board for approval. No additional vote is required on the revised proposal including a proposal that becomes effective on July 1, 1993. However, the newly proposed mill levy may not exceed the number of mills voted on and approved under the original reorganization proposal by more than ten percent. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 of section 15-27.3-08.

4. a. If fewer than all of the districts vote in favor of a new district and the contiguous districts voting in favor do not meet the requirements of subdivision a or b of subsection 3, all or some of the districts may choose to vote again on the same or on a revised reorganization proposal, provided the districts meet the requirements of subdivision a or b of subsection 3.

   b. If the reorganization proposal is revised, the interim district board members representing the districts choosing to vote again shall hold another hearing and make findings as outlined in section 15-27.6-07. The interim district board members shall keep a record of the hearing and shall submit the record and the revised proposal, along with any other relevant information, to the state board for approval. If the state board approves the revised reorganization proposal, the county superintendent shall proceed pursuant to subsection 1 of this section.

   c. The second special election must be held within one year after the initial special election.

5. If a school district does not vote in favor of forming a new school district, any part of that school district excluded from the reorganization proposal pursuant to section 15-27.6-07 may either proceed with annexation or remain a part of that school district.

SECTION 7. AMENDMENT. Section 15-27.6-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **15-27.6-11. ~~Supplemental~~** Additional supplemental **pupil payments.**

~~1.~~ A newly formed district is eligible to receive the supplemental pupil payment provided for in section 15-27.6-05 for an additional period of two years following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during

[3] NOTE: Section 15-27.6-11 was also amended by section 3 of House Bill No. 1413, chapter 184.

the year prior to the effective date of the reorganization if the newly formed district:

~~a. Encompasses at least seven hundred square miles [181299.168 hectares], enrolls at least six hundred students, and, prior to the reorganization, consisted of three contiguous school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs;~~

~~b. Prior to the reorganization, consisted of at least six contiguous school districts, four of which operated grades kindergarten through twelve programs or grades one through twelve programs; or~~

~~c. Either enrolls a minimum of six hundred students or encompasses at least seven hundred square miles [181299.168 hectares], and, prior to the reorganization, consisted of four or five school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs.~~

~~2. Sections 15-27.3-12 through 15-27.3-15 and 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.~~

~~3. A newly formed school district that was approved to receive a planning grant prior to July 17, 1991, is eligible to receive the additional supplemental pupil payments.~~

1. a. Meets the requirements of subdivision a or b of subsection 3 of section 15-27.6-10; or consists of three districts, at least one of which offers grades one through twelve, and has a minimum combined enrollment of six hundred students or covers a minimum combined area of seven hundred square miles [181299.168 hectares], and obtains approval of the state board; and

   b. Has adopted a policy that allows a student residing in the district to attend any school in the district; or

2. Received approval for a planning grant prior to July 17, 1991.

SECTION 8. A new section to chapter 15-27.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Application of sections. Sections 15-27.3-12 through 15-27.3-15 and sections 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.

Approved April 1, 1993
Filed April 1, 1993

CHAPTER 183

SENATE BILL NO. 2519
(Senators Kelsh, Evanson)
(Representatives Gulleson, Porter)

TEACHER RECALL RIGHTS

AN ACT to create and enact two new sections to chapter 15-27.6 of the North Dakota Century Code, relating to employment recall rights of teachers whose contracts have not been renewed because of reorganizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-27.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this Act:

1. "Continuous service" means uninterrupted employment in a school district involved in a reorganization and includes leaves of absence, statutory leaves, military leaves, medical leaves of absence, and leaves for educational enhancement purposes.

2. "First preference" means priority and entitlement to employment, unless the school district by clear and convincing evidence shows a compelling reason why a teacher should not be so employed.

3. "Open teaching positions" means a full-time or part-time teaching position that is not filled by a certificated teacher and which is or will be maintained during any school year within the term of the teacher's recall rights.

4. "Qualified by certification" means a teacher is qualified pursuant to the laws of this state and the rules of the superintendent of public instruction to serve as a teacher in a particular class or subject area.

SECTION 2. A new section to chapter 15-27.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Recall rights - Consortia - Teacher contracts not renewed.

1. When the contract of a teacher employed by a school district involved in reorganization pursuant to chapter 15-27.6 is not renewed under the provisions of subsection 5 of section 15-47-38 because of a reduction in force, the teacher is entitled to first preference for any open teaching positions in the reorganized school district for which the teacher is qualified by certification. The right of recall continues until July first of the year that is two years subsequent to the date of the nonrenewal. Among teachers who have recall rights and who are qualified by certification, the teacher with the longest continuous service within a school district involved in the reorganization is entitled to first

preference. In the event that teachers entitled to recall under this section have equal continuous service within a district involved in the reorganization, then the academic preparation beyond a bachelor's degree must be used to determine which teacher is entitled to first preference under this section.

2. The teacher may exercise rights under this section by providing the reorganized school district with a written demand for recall rights within thirty days of the current school district's written notice of nonrenewal. The teacher shall inform the reorganized school district of any changes in the teacher's address during the period of the teacher's recall rights. When an open position exists within the reorganized school district, the reorganized school district shall send written notice of the open position, including details of the position's requirements to all teachers who are qualified for the position by certification. A written notice must contain, in descending order of preference, the names of teachers entitled to recall rights. Any teacher who fails to accept recall rights in writing, within fourteen days after the teacher has received a letter by certified mail, is deemed to have waived recall rights against that position. The open position must be offered to the teacher who is entitled to preference under this section and who has accepted recall rights for the open position.

3. The recall rights of any teacher who accepts less than full-time employment in a reorganized school district continue for the time period contained in subsection 1 for consideration to fill any open position that offers compensation in excess of the teacher's compensation for less than full-time employment.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 184

HOUSE BILL NO. 1413
(Representatives Dalrymple, Aarsvold, Gates)
(Senators Freborg, Kelsh, O'Connell)

SCHOOL DISTRICT CONSORTIA GRANTS

AN ACT to amend and reenact sections 15-27.6-05, 15-27.6-10, and 15-27.6-11 of the North Dakota Century Code, relating to planning grants and supplemental payments for school district consortia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.6-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-27.6-05. State aid - Planning grants - Supplemental pupil payments.**

1. Payments for approved planning grants must be made quarterly for a period not to exceed one year.

2. ~~Each~~ The interim district board of a consortium implemented during 1990 or 1991 is entitled to receive state aid ~~for a period not to exceed three years~~ in the amount of ~~from~~ one hundred ~~twenty-five to one hundred sixty-five~~ five dollars during each year of the 1993-95 biennium for each full-time equivalent ~~pupil~~ student in average daily membership the previous year in the participating school districts. ~~The interim district board shall have the option to receive the amount equivalent to its third-year payment over a two-year period. This extended payment request must be contained in the consortium's third-year cooperative plan.~~ The superintendent of public instruction shall distribute the payments to the interim district boards in the same manner provided in section 15-40.1-05 for the distribution of payments to school districts. Prior to being entitled to the ~~maximum~~ payment under this subsection, a participating school district must have one or more administrators jointly assigned and the participating districts' plan must be attempting to improve the quality of instruction as determined by the superintendent of public instruction.

SECTION 2. AMENDMENT. Section 15-27.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[1] NOTE: Section 15-27.6-05 was also amended by section 4 of Senate Bill No. 2528, chapter 182.

[2] **15-27.6-10. Approved proposal received by county superintendent - Special election called - Formation of new district.**

1. Upon receipt from the state board of an approved proposal for the reorganization of school districts, the county superintendent, after consulting with the interim district board, shall call a special election as provided in section 15-27.3-08.

2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 6 of section 15-27.3-08.

3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district ~~if the new district would qualify to receive the payments provided for in section 15-27.6-11 and if approved by~~ the state board approves and:

   a. There are three districts, at least one of which offers grades one through twelve, they have a minimum combined enrollment of six hundred students, and they cover a minimum combined area of seven hundred square miles [181299.168 hectares]; or

   b. There are four or more districts, at least one of which offers grades one through twelve, and they have a minimum combined enrollment of six hundred students or they cover a minimum combined area of seven hundred square miles [181299.168 hectares].

   Any contiguous districts ~~voting~~ that vote in favor of forming a new district, but that ~~would not qualify for payments under section 15-27.6-11~~ do not meet the requirements of either subdivision a or b of this subsection, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06, hold a hearing similar to the one described in section 15-27.6-07, and submit a new proposal to the state board for approval. No additional vote is required on the revised proposal, including a proposal that becomes effective on July 1, 1993. However, the newly proposed mill levy may not exceed the general fund mill levy limitations provided in section 57-15-14 plus the additional levy authorized by Senate Bill No. 2024, as approved by the fifty-third legislative assembly. For purposes of determining the amount that can be levied under Senate Bill No. 2024, the amount levied in dollars in the base year is the amount proposed to be levied in dollars by the new district in its first year of operation. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets,

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[2] NOTE: Section 15-27.6-10 was also amended by section 3 of Senate Bill No. 2184, chapter 179, by section 16 of House Bill No. 1003, chapter 3; and by section 6 of Senate Bill No. 2528, chapter 182.

debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 of section 15-27.3-08.

4. a. If fewer than all of the districts vote in favor of a new district and the contiguous districts voting in favor do not meet the requirements of subdivision a or b of subsection 3, all or some of the districts may choose to vote again on the same or on a revised reorganization proposal, provided the districts meet the requirements of subdivision a or b of subsection 3.

   b. If the reorganization proposal is revised, the interim district board members representing the districts choosing to vote again shall hold another hearing and make findings as outlined in section 15-27.6-07. The interim district board members shall keep a record of the hearing and shall submit the record and the revised proposal, along with any other relevant information, to the state board for approval. If the state board approves the revised reorganization proposal, the county superintendent shall proceed pursuant to subsection 1 of this section.

   c. The second special election must be held within one year after the initial special election.

5. If a school district does not vote in favor of forming a new school district, any part of that school district excluded from the reorganization proposal pursuant to section 15-27.6-07 may either proceed with annexation or remain a part of that school district.

SECTION 3. AMENDMENT. Section 15-27.6-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **15-27.6-11. Supplemental ~~pupil~~ student payments.**

1. A newly formed district is eligible to receive the supplemental ~~pupil~~ student payment of one hundred five dollars provided for in section 15-27.6-05 for ~~an additional period of two years~~ one year following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during the year prior to the effective date of the reorganization ~~if the newly formed district:~~

   ~~a. Encompasses at least seven hundred square miles [181299.168 hectares], enrolls at least six hundred students, and, prior to the reorganization, consisted of three contiguous school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs;~~

   ~~b. Prior to the reorganization, consisted of at least six contiguous school districts, four of which operated grades kindergarten through twelve programs or grades one through twelve programs; or~~

[3] NOTE: Section 15-27.6-11 was also amended by section 7 of Senate Bill No. 2528, chapter 182.

~~c. Either enrolls a minimum of six hundred students or encompasses at least seven hundred square miles [181299.168 hectares], and, prior to the reorganization, consisted of four or five school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs.~~

2. Sections 15-27.3-12 through 15-27.3-15 and 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.

~~3. A newly formed school district that was approved to receive a planning grant prior to July 17, 1991, is eligible to receive the additional supplemental pupil payments.~~

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 185

SENATE BILL NO. 2313
(Senators Holmberg, Yockim)

SCHOOL BOARD TERMS AND CITY OFFICE NOMINATIONS

AN ACT to amend and reenact subsection 2 of section 15-28-03, sections 40-21-07, and 61-24.5-07 of the North Dakota Century Code, relating to the terms of office of school board members and petitions for nomination to elective office in cities and of city directors of the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-28-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election, established by state law or established pursuant to the home rule powers of the city, held in a city located wholly or partially within that school district. The school board may enter into an agreement with the governing body of the city ~~commission or the city council~~ concerning the sharing of election personnel, the printing of election materials, the use of one set of pollbooks, and the apportioning of election expenses. If only one set of pollbooks is used, the pollbook must contain a reference indicating the voter's eligibility to vote in the city or school board election, or both. References in this chapter to the date of school board elections, insofar as they relate to a school board ~~which~~ that holds its elections in conjunction with a city, are deemed to mean or to refer to the date of the applicable city election. Such a school board has the further option to convert the terms of office of its members to four years rather than three years in order that school board elections like city elections may be held biennially rather than annually. A school board may convert the future terms of its members to four years by passing a resolution requiring ~~such a~~ the conversion. ~~Thereafter, following~~ Upon the expiration of the three-year term of each incumbent in office ~~as of~~ on the date ~~of the passage of~~ the resolution is passed, the term of office for that position on the board ~~must be~~ is four years, except that ~~as to any seat where such an~~ the resolution may provide that one of the positions being converted to a four-year term must first be converted to one two-year term before becoming a four-year term. If the resolution provides for one two-year term, that term must be chosen by lot. If the extension of ~~the~~ a term ~~would result~~ to four years results in the ~~four-year~~ term ~~of office~~ ending in an odd-numbered year, ~~for which seat~~ one additional and transitional term of three years must be provided before the term becomes a four-year term of office. Once the school board has accomplished the transition to biennial elections, references in this title to annual elections as they apply to the school board are deemed to mean biennial elections, and the election held pursuant to section 15-28-11 must be held in even-numbered years.

SECTION 2. AMENDMENT. Section 40-21-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-07. Petition for nomination of elective official in cities - Signatures required - Contents. A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least ~~thirty-three~~ sixty days and before ~~four~~ five p.m. on the ~~thirty-third~~ sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before ~~four~~ five p.m. on the ~~thirty-third~~ sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required, and the signatures may be on separate sheets of paper. Each qualified elector who signs a petition shall add to the petition the petitioner's mailing address. If a city election is not held in conjunction with a state or county election, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before five p.m. on the thirty-third day before the holding of the election.

SECTION 3. AMENDMENT. Section 61-24.5-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-24.5-07. Election of city directors of the southwest water authority. Any person who is a resident and qualified elector of the city of Dickinson who aspires to the office of director of the southwest water authority shall, at least ~~thirty-three~~ sixty days and before ~~four~~ five p.m. on the ~~thirty-third~~ sixtieth day prior to the holding of the election, file with the city auditor a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election, except that the petition for the first such election must be signed by not less than two hundred qualified electors. Signers of a petition ~~shall~~ must reside within the corporate limits of the city, and each signer of the petition shall include with ~~his~~ the signer's name ~~his~~ the signer's mailing address. The petition must include the candidate's name, post-office address, and the title of the office of the southwest water authority for which ~~he~~ the candidate is seeking election.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA)
}ss.
CITY OF DICKINSON)

I _____, being duly sworn, depose and say that I reside in the city of Dickinson and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the municipal election to be held on the _____ day of _____,

19__, and I do hereby request that my name be printed upon the election ballot as provided by law, as a candidate for such office.

Subscribed and sworn to before me this ____ day of _____, 19__.

_____
Notary Public, North Dakota

Upon receipt of the petition the city auditor shall without fee place the name of the aspirant on the election ballot as a candidate for the ~~aforesaid~~ office of director. The candidate or candidates, depending on whether one or two directors are being elected, receiving the highest number of votes are elected. The provisions of chapter 40-21 govern the election of directors from the city of Dickinson for the southwest water authority.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 186

HOUSE BILL NO. 1193
(Education Committee)
(At the request of the Office of Management and Budget)

SCHOOL CONSTRUCTION FUNDING

AN ACT to require the superintendent of public instruction, with advice and assistance from the industrial commission, to administer the sale of all leases and contracts entered into before July 1, 1989, by the state board of public school education concerning the state school construction fund, and the deposit of proceeds in the general fund; to create and enact a new subsection to section 15-29-08 and two new sections to chapter 15-60 of the North Dakota Century Code, relating to the authority of school boards to purchase equipment or lease a telecommunication system, the authority of the board of university and school lands to make loans to school districts out of moneys in the coal development trust fund for school construction, and the authority of a school board to issue evidences of indebtedness to repay a loan from the board of university and school lands; to amend and reenact sections 15-35-01.1, 15-60-01, subsection 7 of section 21-03-07, subsection 1 of section 28-32-01, subsection 1 of section 57-15-16, and subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to approval by the superintendent of public instruction of certain school district construction projects, the state school construction fund, the issuance of general obligation bonds for certain projects, exceptions to the Administrative Agencies Practice Act, the use of moneys in the school building fund for the payment of bonds, and authorizing loans to be made from moneys in the coal development trust fund to school districts for school construction; and to repeal sections 15-21-20, 15-60-03, 15-60-06, 15-60-07, and 15-60-08 of the North Dakota Century Code, relating to the creation of and use of moneys in the state school construction fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Superintendent of public instruction required to sell state school construction fund leases - Assistance by the industrial commission. The industrial commission shall review and appraise the value of all contracts and leases in the possession of the superintendent of public instruction which were entered into before July 1, 1989, by the state board of public school education concerning the state school construction fund provided for by chapter 15-60. After the review and appraisal, the industrial commission, on behalf of the superintendent of public instruction, shall structure the leases and contracts for sale. Before January 1, 1994, the superintendent of public instruction shall sell all such leases. All proceeds from the sale of the leases and contracts must be paid over by the superintendent of public instruction to the state treasurer for deposit in the general fund.

SECTION 2. A new subsection to section 15-29-08 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To purchase equipment or lease a telecommunication system or network, or to participate with other school districts or other entities in the purchase of equipment or lease of a telecommunication system or network.

SECTION 3. AMENDMENT. Section 15-35-01.1 of the North Dakota Century Code is amended and reenacted as follows:

15-35-01.1. Approval required for certain school district construction projects.

1. Notwithstanding the powers and duties of school boards of public school districts otherwise provided by law, all construction, purchase, repair, improvement, renovation, or modernization of any school building or facility within a school district estimated by the school boards to cost in excess of twenty-five thousand dollars ~~shall~~ may not be commenced unless approved by the superintendent of public instruction. ~~The superintendent of public instruction shall not approve such school building project unless he shall find that the building will be fully or substantially usable by any reorganized school district which in his judgment is likely to be created and which would encompass all or a major portion of the school district applying for approval of the building project.~~ No such construction, purchase, repair, improvement, renovation, or modernization of any school building or facility may be approved unless the school district proposing the project demonstrates the need and the educational utility of the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education. In the event of disagreement between the superintendent of public instruction and the school board applying for approval of a construction project under this section, ~~such~~ the school board ~~shall have the right to~~ may appeal ~~such~~ the application to the state board of public school education and the decision of the state board approving or disapproving ~~such~~ the application ~~shall be~~ is final.

2. If a school district intends to apply for a loan from the board of university and school lands pursuant to chapter 15-60, the school district must demonstrate fiscal need and capacity to repay the loan under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the board of university and school lands.

3. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.

SECTION 4. AMENDMENT. Section 15-60-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-60-01. Definitions. As used ~~or referred to~~ in this chapter, unless the context ~~clearly indicates~~ otherwise requires:

1. "Bank" means the Bank of North Dakota.

2. "Board" means the ~~state~~ board of ~~public~~ university and school ~~education~~ lands.

~~2.~~ 3. "Construction" means ~~acquisition and~~ purchase, lease, or construction, and the term "to construct" means to ~~acquire and to~~ purchase, lease, or construct in such manner as may be deemed desirable.

~~3. "Department" means the department of public instruction.~~

4. "Fund" means the ~~state school construction~~ coal development trust fund created by ~~this chapter~~ section 21 of article X of the Constitution of North Dakota and section 57-62-02.

5. "Improvement" means extension, enlargement, ~~and~~ or improvement, and the term "to improve" means to extend, to enlarge, ~~and~~ or to improve in such manner as may be deemed desirable.

6. "Project" means any structure~~,~~ or facility~~, or undertaking including a technological undertaking which the board is~~ that a school district is authorized to construct or improve~~,~~ under ~~this chapter~~ section 15-35-01.1 and which is estimated to cost in excess of fifty thousand dollars.

7. "Superintendent" means the superintendent of public instruction.

SECTION 5. A new section to chapter 15-60 of the North Dakota Century Code is created and enacted as follows:

Loans.

1. The board may make loans for purposes described in this chapter to school districts from moneys deposited in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02. The board shall consider an application for a loan in the order of its approval by the superintendent under subsection 2 of section 15-35-01.1. The outstanding principal balance of loans made from the fund under this chapter may not exceed twenty-five million dollars.

2. An application for a loan must be approved by the superintendent pursuant to section 15-35-01.1 before the application may be submitted to the board. The application must contain information deemed necessary by the superintendent, including a discussion of alternative sources or methods for financing the construction or improvement, and must be considered in the order of its approval under subsection 1 of section 15-35-01.1. If the superintendent approves the loan, the superintendent may also determine the loan amount and a percent of interest to be paid on the loan. In determining the amount of a loan, the superintendent shall take into account the cost of the project and the fiscal capacity of the school district. To be eligible for a loan, the school district must have an existing indebtedness equal to at least fifteen percent of the school district's taxable valuation. The interest on a loan may not exceed the rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15-35-01.1, provided the interest rate may not exceed six percent.

3. Loan applications approved by the board must be forwarded to the Bank. The Bank shall assist the board by preparing and approving the loan

documents, handling the loan closing, and servicing the loan. The Bank shall receive payments of principal and interest from the school districts, and shall remit payments of principal to the board for redeposit in the fund. The interest must be used and deposited in accordance with section 21 of article X of the Constitution of North Dakota.

SECTION 6. A new section to chapter 15-60 of the North Dakota Century Code is created and enacted as follows:

School board may issue evidences of indebtedness. The school board of a school district may issue and sell evidences of indebtedness pursuant to chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the lesser of thirty percent of the taxable valuation of the school district or five million dollars. Evidences of indebtedness issued pursuant to this chapter constitute a general obligation of the school district.

SECTION 7. AMENDMENT. Subsection 7 of section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15-51-11, 15-51-13, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings~~; provided, that the~~ or for the construction or improvement of a project pursuant to chapter 15-60. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property ~~which~~ that is the subject of the protest. If the governing body finds ~~such~~ the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

[1] **SECTION 8. AMENDMENT.** Subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an

[1] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1264, 1336, and 1400 and Senate Bill Nos. 2215 and 2228, chapters 135, 328, 327, 80, 173, and 236.

administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

a. The office of management and budget except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

b. The adjutant general with respect to the division of emergency management.

c. The council on the arts.

d. The state auditor.

e. The department of economic development and finance.

f. The dairy promotion commission.

g. The education factfinding commission.

h. The educational telecommunications council.

i. The board of equalization.

j. The board of higher education.

k. The Indian affairs commission.

l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.

m. The department of corrections and rehabilitation.

n. The board of pardons.

o. The parks and tourism department.

p. The parole board.

q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.

r. ~~The state board of public school education while administering the state school construction fund.~~

~~s.~~ The state fair association.

~~t.~~ s. The state toxicologist.

~~t.~~ t. The board of university and school lands except with respect to activities under chapter 47-30.1.

~~u.~~ u. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

~~v.~~ v. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

SECTION 9. AMENDMENT. Subsection 1 of section 57-15-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any school district shall levy taxes annually for a school building fund, not in excess of twenty mills, which levy ~~shall be~~ is in addition to and not restricted by the levy limitations prescribed by law, when authorized to do so by sixty percent of the qualified electors voting upon the question at a regular or special election in any school district. The governing body of ~~such~~ the school district may create ~~such~~ the building fund by appropriating and setting up in its budget for ~~such~~ an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law. ~~In all cases where~~ If a portion or all of the proceeds of ~~such~~ the levy have been allocated by contract to the payment of rentals upon contracts with the state board of public school education as administrator of the state school construction fund, ~~such~~ the levy ~~shall~~ must be made annually by the governing body of the school district until the full amount of all such obligations is fully paid. Any portion of a levy for a school building fund which has not been allocated by contract with the state board of public school education must be allocated by the governing body pursuant to section 57-15-17. Upon the completion of all payments to the state school construction fund, ~~such~~ or upon payment and cancellation or defeasance of the bonds, the levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy ~~shall~~ must be submitted to the qualified electors of the school district at any regular or special election and, upon a favorable vote of sixty percent of the qualified electors voting, ~~such~~ the levy ~~shall~~ must be discontinued. Any school district, executing a contract or lease with the state board of public school education or issuing general obligation bonds, which contract or lease or bond issue requires the maintenance of the levy provided in this section, shall immediately file a certified copy of ~~such~~ the contract ~~or~~, lease, or bond issue with the county auditor or auditors of the county or counties in which ~~such~~ the school district is located. The county auditor or auditors shall register ~~such~~ the contract ~~or~~, lease, or bond issue in the bond register in substantially the manner provided in section 21-03-23. Upon the filing of ~~such~~ the contract ~~or~~, lease, or bond issue with the county auditor or auditors, the school district ~~shall be without power to~~ may not discontinue ~~such~~ the levy and ~~such~~ the levy ~~shall~~ must automatically be included in the tax levy of ~~such~~ the school district from year to year by the county auditor or

auditors until a sufficient sum of money has been collected to pay to the state treasurer for the retirement of all obligations of ~~such~~ the school district with the state board of public school education or to pay to the custodian of the bond sinking fund all amounts due or to become due on the bonds.

SECTION 10. AMENDMENT. Subsection 1 of section 57-62-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Fifteen percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03, and for loans to school districts pursuant to chapter 15-60. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the state's general fund. Loan principal payments must be redeposited in the trust fund. ~~Such~~ The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15-60.

[2] **SECTION 11. REPEAL.** Section 15-21-20 of the North Dakota Century Code and sections 15-60-03, 15-60-06, 15-60-07, and 15-60-08 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved April 7, 1993
Filed April 8, 1993

[2] NOTE: Section 15-60-08 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 187

HOUSE BILL NO. 1474
(Representatives Wardner, Monson)
(Senator O'Connell)

SCHOOL DISTRICT INVESTIGATION RECORDS

AN ACT to amend and reenact section 15-29-10 of the North Dakota Century Code, relating to school district records and complaints against school district employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-29-10. District records open to examination - Records as evidence - Investigation - Exemption. ~~The~~ Except as otherwise provided by law, the records, vouchers, and papers of the district are open to examination by any taxpayer of the district. These records, or a transcript thereof certified by the business manager, must be received in all courts as prima facie evidence of the facts therein set forth. Any record, document, or paper generated or produced as a result of an administrative investigation of a complaint concerning a school district employee, by a parent, student, or other person, is confidential and exempt from this section and is not subject to section 44-04-18, until the investigation is complete. The time period for investigating such a complaint and determining the disciplinary action, if any, to be taken may not exceed sixty days from the date the complaint is received.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 188

SENATE BILL NO. 2216
(Education Committee)
(At the request of the Superintendent of Public Instruction)

HOME-BASED INSTRUCTION

AN ACT to create and enact a new section to chapter 15-34.1 of the North Dakota Century Code, relating to definitions; to amend and reenact section 1 of chapter 181 of the 1991 Session Laws of North Dakota, section 10 of chapter 2 and sections 4 and 7 of chapter 198 of the 1989 Session Laws of North Dakota, relating to home-based instruction of students; to repeal section 9 of chapter 198 of the 1989 Session Laws of North Dakota, relating to the expiration date for statutes on home-based instruction of students; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context requires otherwise:

1. "Home-based instruction" means an educational program for students based in the child's home and supervised by the child's parent or parents wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

2. "Nonpublic school" means an educational institution which students attend in lieu of public school attendance wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

3. "Parent" includes a legal guardian.

4. "School" means a public school supported, in whole or in part, by state funds wherein a resident of North Dakota may legally fulfill the compulsory instruction requirements of section 15-34.1-01.

SECTION 2. AMENDMENT. Section 4 of chapter 198 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

Home-based instruction. Home-based instruction is an educational program for students based in the child's home and supervised by the child's parent or parents. A parent who provides home-based instruction may only invoke the home-based instruction exception to compulsory attendance. A parent is qualified to supervise a program of home-based instruction if the parent is certified ~~or certifiable~~ to teach in North Dakota; has a high school education or has received a general educational development certificate and is ~~supervised~~ monitored by a ~~certificated~~ certified teacher ~~employed either by the public school district in which the parent resides or, if requested by the parent, by a state-approved private or parochial~~

~~school~~; or has ~~passed~~ met or exceeded the cut-off score of the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test. Home-based instruction must include those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 and must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year. Every parent supervising home-based instruction shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise home-based instruction for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least thirty days prior to the beginning of the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of residency within the district. The statement must include:

1. The names and addresses of the parent who will supervise and the child who will receive home-based instruction;
2. The date of birth and grade level of each child;
3. The intention of the parent to supervise home-based instruction;
4. The qualifications of the parent who will supervise the home-based instruction;
5. A list of courses or extracurricular activities in which the child intends to participate in the public school district; ~~and~~
6. Proof of an immunization record as it relates to section 23-07-16;
7. Proof of identity as it relates to section 54-23.2-04.2; and
8. An oath or affirmation that the parent will comply with all provisions of this chapter.

SECTION 3. AMENDMENT. Section 1 of chapter 181 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

Students receiving home-based instruction - Quality assurance. In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the following minimum indices of quality education are established:

1. A standardized achievement test used by the public school in the school district in which the ~~child resides~~ parent resides or, if requested by the parent, a standardized achievement test used by a state-approved ~~private or parochial~~ nonpublic school must be given annually to each child receiving home-based instruction starting with grade three and annually thereafter. The test must be given in the child's learning

environment or the public school and must be administered by a certified teacher ~~employed by the public school district in which the parent resides or, if requested by the parent, employed by a state-approved private or parochial school~~. The cost of such testing must be borne by the local school district in which the ~~child~~ parent resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is administered by a certified teacher not employed by a ~~state-approved private or parochial~~ public school. Results of such testing must be ~~provided to~~ filed with the local public school superintendent. If the ~~child~~ parent resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the ~~child's~~ parent's residence.

2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem. If the multidisciplinary assessment team evaluation determines that the child is not handicapped according to the eligibility criteria of the department of public instruction and the child does not require specially designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction a statement, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03. If the evaluation of the multidisciplinary assessment team determines that the child is handicapped, but not developmentally disabled, according to the eligibility criteria of the department of public instruction, and the student requires specially designed instruction due to the handicap and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction an individualized education program plan, formulated within rules adopted by the department of public instruction, indicating that the child's needs for special education are being appropriately addressed by persons qualified to provide special education or related services. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03.

3. Any ~~certificated~~ certified teacher ~~supervising~~ monitoring home-based instruction shall spend a minimum average of one hour per week in contact with the first student and in conjunction with the parent. With two or more children under supervision, the teacher shall monitor a minimum additional one-half hour per month for each child under the teacher's supervision who is receiving home-based instruction. The teacher shall evaluate the student's progress and report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.

4. If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress.

SECTION 4. AMENDMENT. Section 10 of chapter 2 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

State aid. For purposes of allocating foundation aid and other state assistance to local school districts, a student receiving home-based instruction is deemed enrolled in the school district in which the student resides if the student is ~~supervised~~ monitored by a certificated teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the per-pupil payment provided in section 15-40.1-06 times the appropriate factor in section 15-40.1-07 or 15-40.1-08 for each such student. When a student is supervised through home-based instruction and is enrolled in classes in the public school, proportionate payments must be made as provided in sections 15-40.1-07 and 15-40.1-08. The total amount may not exceed the equivalent of one full foundation aid payment.

SECTION 5. AMENDMENT. Section 7 of chapter 198 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

~~**Supervision**~~ Monitoring **or administration by a** ~~**state-approved private or parochial school**~~ certified teacher. Any certified teacher ~~employed by a state-approved private or parochial school~~ who ~~supervises~~ monitors home-based instruction or who administers a standardized achievement test to children receiving home-based instruction must notify the child's public school district of residence that the teacher is providing such ~~supervision~~ monitoring or administration. The parent of any student receiving home-based instruction that is ~~supervised~~ monitored by or taking a test administered by a certified teacher not employed by a ~~state-approved private or parochial~~ public school is responsible for any costs charged ~~by the state-approved private or parochial school~~ for such ~~supervision~~ monitoring or test administration.

SECTION 6. REPEAL. Section 9 of chapter 198 of the 1989 Session Laws of North Dakota is repealed.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 189

HOUSE BILL NO. 1089
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOLBUS DRIVER QUALIFICATIONS

AN ACT to amend and reenact section 15-34.2-14 of the North Dakota Century Code, relating to the qualifications of a schoolbus driver.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-34.2-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.2-14. Qualifications, character, and age of schoolbus and school vehicle drivers. The driver of a schoolbus or a school vehicle must be in good physical and mental health, able-bodied, free from communicable diseases, and must have normal use of both hands, both feet, both eyes, and both ears. It is the duty of school boards to annually designate ~~reputable physicians~~ licensed health care professionals, as defined by department of transportation standards, to examine each driver ~~annually~~. Every two years, each driver shall present a ~~physician's~~ medical certificate of physical fitness and a medical card, as required by the United States department of transportation, to the employing school board before a contract is signed. Such driver must possess a good moral character, must be at least twenty-one years of age, and must have a North Dakota driver's license. However, the school board may lower the minimum age of a driver below twenty-one. The school board may, at its discretion, require drug or alcohol testing. This section does not prohibit regular members of the faculty of an elementary or high school from operating vehicles for the purpose of transporting students to regular or special events related to the educational programs in which the students are enrolled.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 190

HOUSE BILL NO. 1319
(Representative Gates)

TEACHER CERTIFICATES AND SCHOOL PROVISIONS

AN ACT to repeal sections 15-36-10, 15-38-05, and 15-47-02 of the North Dakota Century Code, relating to the recording of teacher certificates in the office of the county superintendents of schools, the annual observance of Temperance Day by the public schools, and state institutions of higher education constituting part of the state's free public school system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15-38-05 of the North Dakota Century Code and sections 15-36-10 and 15-47-02 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 191

HOUSE BILL NO. 1074
(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR ADDITIONAL CREDIT AND PARTICIPATION

AN ACT to amend and reenact subsections 6 and 10 of section 15-39.1-04 and section 15-39.1-24 of the North Dakota Century Code, relating to definitions and purchase of additional credit under the teachers' fund for retirement; and to repeal section 15-39.1-09.1 of the North Dakota Century Code, relating to participation of nonpublic schoolteachers in the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6 and 10 of section 15-39.1-04 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. "Interest"~~,~~ as applied to member assessments ~~or~~ is an annual rate of six percent compounded monthly and as applied to the repurchase of credit for withdrawn years~~,~~ is six percent compounded annually.

10. "State institution" includes ~~all state colleges and universities, the school of forestry, the school of science,~~ the school for the blind, the school for the deaf, the developmental center at Grafton, and the North Dakota industrial school.

SECTION 2. AMENDMENT. Section 15-39.1-24 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-24. Purchase of additional credit. Prior to retirement a teacher may purchase additional credit for use toward retirement in the following instances and manner:

1. Any teacher may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota. However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching service do not qualify for credit in this state if the years claimed also qualify for retirement benefits from an out-of-state retirement system.

2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with the board

and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the Veterans' Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.

3. A teacher who attends a college, university, or other recognized school for two consecutive semesters or three consecutive quarters, other than summer sessions, for the purpose of improving the teacher's qualifications in the teaching profession is entitled to have such periods while in attendance at that college, university, or school credited, not to exceed three years of teaching service, under this chapter. To be eligible for purchasing credit under this subsection, the teacher must have taught at least one full school year in North Dakota immediately preceding entrance into the college, university, or school, or, immediately following such training, the teacher must have taught not less than one full school year in a public school or state institution of this state.

4. ~~Any teacher, after acquiring one year of service credit in the fund, may elect to purchase no more than ten years' service credit in accordance with this chapter, for years of service as a nonpublic schoolteacher, prior to July 1, 1971. For the purposes of this subsection, "nonpublic schoolteacher" means "lay faculty" as defined by subdivision k of subsection 1 of former section 15-39-01.~~

~~5.~~ A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.

~~6.~~ 5. A teacher may purchase credit for service as an administrator or teacher in the field of education if employed by an agency of the United States government teaching school age children. The maximum service that may be purchased under this subsection is ten years.

~~7.~~ 6. Except as provided in subsections 2 and ~~5~~ 4, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

SECTION 3. REPEAL. Section 15-39.1-09.1 of the North Dakota Century Code is repealed.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 192

HOUSE BILL NO. 1069
(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TEACHERS' FUND FOR RETIREMENT BENEFITS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact section 15-39.1-10 and subsection 2 of section 15-39.1-18 of the North Dakota Century Code, relating to computation of benefits and disability retirements under the teachers' fund for retirement; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-39.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10. Eligibility for benefits.

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:

   a. All members who have completed five years of teaching credit and who have attained the age of sixty-five years.

   b. All members who have completed five years of teaching credit and who have a combined total of years of service credit~~, of which one year was completed after July 1, 1979,~~ and years of age which equals eighty-five.

2. The amount of retirement benefits is one and ~~thirty-nine~~ fifty-five hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

3. Notwithstanding any other provision of this section, no ~~full-time~~ member who retired ~~in 1971~~ on July 1, 1993, or after ~~such year,~~ and is eligible to receive ~~or who is receiving~~ benefits under former chapter 15-39, chapter 15-39.1, or section 15-39.2-02, ~~shall~~ may receive benefits which are less than:

   a. ~~Six~~ Ten dollars per month per year of teaching to twenty-five years.

   b. ~~Seven~~ Fifteen dollars ~~and fifty cents~~ per month per year of teaching over twenty-five years.

~~Teachers, superintendents, assistant superintendents, principals, assistant principals, special teachers, supervisors of instruction and other supervisors, presidents, deans, school librarians, and registrars employed by any state institution under the supervision and control of the board of higher education shall not be eligible for the minimum benefits provided by this subsection.~~

~~4. The greater benefit available from this chapter as it existed on July 1, 1977, and July 1, 1979, shall be available to any member who had rights vested in the chapter on June 30, 1979.~~

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Postretirement adjustments. An individual who on June 30, 1993, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive three dollars per month multiplied by the individual's number of years of credited service for individuals who retired before 1980, two dollars and fifty cents per month multiplied by the individual's number of years of credited service for individuals who retired after 1979 and before 1984, or one dollar per month multiplied by the individual's number of years of credited service for individuals who retired after 1983 and who retire before July 1, 1993, or an increase of ten percent in the individual's currently payable annuity, whichever is greater. The minimum monthly increase under this section is five dollars and the maximum monthly increase under this section is one hundred dollars.

SECTION 3. AMENDMENT. Subsection 2 of section 15-39.1-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of the disability annuity is the greater of ~~twenty percent of the last annual salary, or~~ the amount computed by the retirement formula in section 15-39.1-10 without consideration of age or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service. A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16.

SECTION 4. APPLICATION OF ACT. Sections 1 and 3 of this Act apply only to individuals who begin receiving monthly benefits from the fund under chapter 15-39.1 after June 30, 1993, and applies to those benefits payable after June 30, 1993. Section 2 of this Act applies to benefits payable after June 30, 1993.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 193

SENATE BILL NO. 2036
(Legislative Council)
(Interim Education Committee)

FOUNDATION AID DEDUCTIONS

AN ACT to amend and reenact subsection 3 of section 15-40.1-06 of the North Dakota Century Code, relating to the calculation of educational support per pupil.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 3 of section 15-40.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In determining the amount of ~~payment~~ payments due school districts for per-pupil and transportation aid under this section, the amount of per-pupil aid and transportation aid for which a school district is eligible must be added together, and from that total, the following amounts must be subtracted ~~from the amount of such aid~~:

   a. The product of ~~twenty-one mills for the 1989-90 school year and~~ twenty-two mills ~~for each year thereafter~~ times the latest available net assessed and equalized valuation of property of the school district.

   b. The amount that the unobligated general fund balance of a school ~~district's interim fund~~ district on the preceding June thirtieth is in excess of ~~the amount authorized by section 57-15-27~~ three-fourths of the actual expenditures, plus an additional twenty thousand dollars.

Approved April 7, 1993
Filed April 8, 1993

[1] NOTE: Section 15-40.1-06 was also amended by section 19 of House No. 1003, chapter 3.

CHAPTER 194

HOUSE BILL NO. 1158
(Education Committee)
(At the request of the Superintendent of Public Instruction)

FOUNDATION AID FOR OUT-OF-STATE STUDENT

AN ACT to amend and reenact sections 15-40.1-07, 15-40.1-08, 15-40.2-09, and 15-40.2-10 of the North Dakota Century Code, relating to payment of foundation aid for North Dakota students attending out-of-state schools; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-40.1-07. High school per-pupil payments - Amount - Proportionate payments.** Payments must be made each year from state funds to each school district operating a high school and to each school district contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, as follows:

1. For each high school district having under seventy-five pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.635 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.625 times the number of high school pupils in grades nine through twelve registered in that school district, times the educational support per pupil as provided in section 15-40.1-06.

2. For each high school district having seventy-five or more, but less than one hundred fifty pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.35 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.335 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06.

3. For each high school district having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.28 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.24 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06.

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[1] NOTE: Section 15-40.1-07 was also amended by section 20 of House Bill No. 1003, chapter 3.

4. For each high school district having a total high school enrollment of five hundred fifty or more pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.17 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.14 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06.

5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:

   a. Subsection 1 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has less than seventy-five pupils in average daily membership.

   b. Subsection 2 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has seventy-five or more, but less than one hundred fifty pupils in average daily membership.

   c. Subsection 3 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has one hundred fifty or more, but less than five hundred fifty pupils in average daily membership.

   d. Subsection 4 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more pupils in average daily membership.

Every high school district must receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. Such payments may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments must be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs are eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding

eligibility for school districts to receive proportionate payments for such summer education programs.

Districts that did not maintain high schools during the year of 1964-1965 are not eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. ~~Payments pursuant to this chapter to school districts in bordering states must be made after subtracting the amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.~~

SECTION 2. AMENDMENT. Section 15-40.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **15-40.1-08. Elementary per-pupil payments - Amount.** Payments must be made from state funds to each school district operating an elementary school and to each school district contracting to educate elementary pupils in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural school, the amount of money resulting from multiplying the factor 1.29 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.28 times the number of pupils in that school in grades one through eight in average daily membership, up to a maximum of sixteen pupils, times the educational support per pupil as provided in section 15-40.1-06. There must be paid .9 times each additional pupil in its school in grades one through eight in average daily membership times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty pupils in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the pupils in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has pupils in grade seven or eight, the weighting factor for the pupils in grades seven and eight must be the same as that provided for in subsection 5.

2. For each elementary school in school districts having under one hundred pupils in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.045 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.09 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher, up to a maximum of twenty pupils per classroom or per teacher, times the educational support

[2] NOTE: Section 15-40.1-08 was also amended by section 21 of House Bill No. 1003, chapter 3, and by section 1 of Senate Bill No. 2178, chapter 195.

per pupil as provided in section 15-40.1-06. There must be paid .9 times each additional pupil in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher.

3. For each elementary school in school districts having one hundred or more pupils in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary pupils in grades one through six, the amount of money resulting from multiplying the factor .9025 for the 1989-90 school year and, beginning July 1, 1990, the factor .905 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.

4. For each elementary school in school districts having an average daily membership of one thousand or more elementary pupils in grades one through six, the amount of money resulting from multiplying the factor .95 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.

5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school that has pupils in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.005 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.01 times the number of pupils in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.

6. For each elementary school having pupils under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, the amount of money resulting from multiplying the factor .75 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.01 times the number of special education pupils in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06.

7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, ~~and for each out-of-state kindergarten program, approved by the state superintendent and utilized by North Dakota school districts bordering other states,~~ the amount of money resulting from multiplying the factor .50 times the number of pupils in

that school in average daily membership in each classroom or for each teacher times the educational support per-pupil payment ~~for that elementary school~~ as ~~determined~~ provided under ~~this~~ section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Every school district must receive at least as much in total payments for elementary pupils as it would have received if it had the highest number of pupils in the next lower category. ~~Payments pursuant to this chapter to school districts in bordering states must be made after subtracting the amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.~~

SECTION 3. AMENDMENT. Section 15-40.2-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance when district annexed or reorganized.** Students may attend a school in a bordering state under the following circumstances:

1. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which such student resides may contract with the bordering state for the education of such student.

2. A student who resides within a school district which is annexed to or reorganized with another district or districts, and who attended a school district in a bordering state during the ~~immediately preceding~~ 1990-91 school year, shall be permitted to attend or continue attending school in the district in the bordering state.

If the school board of the district in which the student resides denies a request for attendance in another state, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision shall be final. ~~In the event that the district does not comply with a decision requiring that tuition charges be paid, state payments shall be withheld as provided in section 15-40.2-05.~~

~~Payments must be made to the school district or institution in the bordering state for state foundation aid for students attending out-of-state schools under a reciprocal agreement based on actual enrollment for that year. Payments will be~~

[3] NOTE: Section 15-40.2-09 was also amended by section 5 of House Bill No. 1045, chapter 45, and by section 1 of Senate Bill No. 2490, chapter 199.

~~determined as provided in section 15-40.1-07 or 15-40.1-08 based on the weighting factor of the student's district or residence. The remainder of the pupil's tuition as determined under section 15-40.2-10 shall be paid by the district of the pupil's residence~~ Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition costs the district would be entitled to ~~as~~ compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.

This section shall not be construed to require the district of residence to provide ~~pupil~~ student transportation, or payments in lieu thereof, for ~~pupils for whom the payment of tuition has been approved~~ students attending out-of-state schools.

SECTION 4. AMENDMENT. Section 15-40.2-10 of the North Dakota Century Code is amended and reenacted as follows:

15-40.2-10. Reciprocal master agreements for ~~pupil~~ student attendance in other states - School district agreements. The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school ~~pupils~~ students in the public schools or institutions in such bordering states. ~~Such reciprocal agreements shall provide for payment on a per pupil basis from the state foundation aid program for pupils from this state attending schools in bordering states in a sum equal to payments received by the district of the pupil's residence from the state foundation aid program. The superintendent of public instruction, by certificate to the office of management and budget shall authorize payments from the appropriation for state payments to school districts pursuant to chapter 15-40.1 for the attendance of pupils in bordering states, and the office of management and budget, within the limits of legislative appropriations, shall make such payments. The balance of the tuition payment by the pupil's district of residence shall not exceed the amount established by reciprocal agreement less the amount paid from the state foundation aid program to the school district or institution in the bordering state.~~ A school district may, upon notification to the superintendent of public instruction, enter into an agreement with a school district in a bordering state for the education of elementary and high school students. The agreement, which replaces the provisions of the master reciprocal agreement, may provide for the payment of tuition at an amount agreed upon by the school district of residence and the school district of the bordering state. However, the tuition may not exceed the amount established under the reciprocal master agreement, nor may it be less than the per student foundation aid plus tuition apportionment in the student's school district of residence. For purposes of foundation aid, a student attending school in a bordering state under such an agreement is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district in the bordering state for payments as provided in the agreement.

SECTION 5. EFFECTIVE DATE. Section 4 of this Act becomes effective on July 1, 1994.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 195

SENATE BILL NO. 2178
(Education Committee)
(At the request of the Superintendent of Public Instruction)

KINDERGARTEN PER-PUPIL SUPPORT

AN ACT to amend and reenact subsection 7 of section 15-40.1-08 of the North Dakota Century Code, relating to educational support payments for approved kindergarten programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 7 of section 15-40.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. For each elementary school providing a kindergarten that is established according to provisions of section 15-45-01, and for each out-of-state kindergarten program, approved by the state superintendent and utilized by North Dakota school districts bordering other states, the amount of money resulting from multiplying the factor .50 times the number of pupils in that school in average daily membership in each classroom or for each teacher times the educational support per-pupil payment ~~for that elementary school as determined under this section~~ as provided in section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Approved March 10, 1993
Filed March 11, 1993

[1] NOTE: Section 15-40.1-08 was also amended by section 21 of House Bill No. 1003, chapter 3, and by section 2 of House Bill No. 1158, chapter 194.

CHAPTER 196

SENATE BILL NO. 2187
(Education Committee)
(At the request of the Superintendent of Public Instruction)

NONRESIDENT STUDENT ADMISSION

AN ACT to amend and reenact sections 15-40.2-01, 15-40.2-02, and 15-40.2-04 of the North Dakota Century Code, relating to when school districts may admit nonresident students without the payment of tuition from the district of residence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-01. Transfer of pupils to other districts or institutions - Tuition agreements.

1. The school board of any district may send kindergarten, elementary, or high school pupils into another school district or to an accredited institution of another state when, because of shorter distances and other conveniences, it is to the best interests of the school district to do so, and in such instances the board may pay the tuition of such pupils to the district or institution to which they are sent. The school board may arrange, and when petitioned to do so by a majority of qualified electors of the district, shall arrange with the school boards of other districts or with the institutions, to send pupils to such other districts or institutions who can be taught conveniently therein, and for the payment of their tuition and for furnishing and paying for their transportation to and from such other schools or institutions.

2. When a school district ceases to provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice, outside their district of residence without going through the procedures outlined in section 15-40.2-05. The school district of residence shall either pay tuition or seek a tuition waiver from the admitting school district.

SECTION 2. AMENDMENT. Section 15-40.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-02. Receiving of pupils by admitting districts. Any school district shall admit kindergarten, elementary, and high school pupils from other districts to its schools when it can be done without injuring or overcrowding such schools and after the board of the sending district and the board of the admitting district have entered into an agreement governing the attendance of such pupils as may be enrolled or when tuition will be paid by a parent or guardian in the manner provided for in this chapter or when a grade level is no longer being taught by the sending district as indicated in subsection 2 of section 15-40.2-01.

SECTION 3. AMENDMENT. Section 15-40.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-40.2-04. Nonresident tuition payments ~~mandatory~~ - Payments are exclusive.**

1. Any school district that admits nonresident pupils to its schools, as provided by this chapter, shall charge tuition for such pupils except ~~that school districts have the option of charging tuition for nonresident pupils enrolled in an approved alternative education program~~ as provided in subsection 3. The whole amount of the tuition must be paid by the district from which the pupil is admitted, in accordance with section 15-40.2-03, or by the pupil's parent or guardian, in accordance with section 15-40.2-06. Except as otherwise provided, any school district that fails to sign a tuition agreement and fails to charge and collect tuition for nonresident students shall forfeit foundation payments for those nonresident students for whom tuition is not paid.

2. School districts have the option of charging tuition for nonresident pupils enrolled in an approved alternative education program. If no tuition is charged, no written agreement between the school districts is necessary.

3. A school district may accept a nonresident student without a charge and collection of tuition if ~~a~~:

   a. A written agreement for nonpayment of tuition is made between the sending and receiving districts~~. No written agreement is necessary if the nonresident~~;

   b. The student is enrolled in an approved alternative education program for which no tuition is charged pursuant to subsection 2; or

   c. The student's school district of residence has ceased to provide educational services to the student's grade level as described in subsection 2 of section 15-40.2-01.

4. No school district may charge or collect from any nonresident pupil, parent or guardian of a nonresident pupil, or the district of the pupil's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident pupils.

Approved March 22, 1993
Filed March 23, 1993

[1] NOTE: Section 15-40.2-04 was also amended by section 25 of House Bill No. 1003, chapter 3.

CHAPTER 197

HOUSE BILL NO. 1291
(Representatives Aarsvold, Kaldor, Monson, Porter, Wardner)
(Senator Kelsh)

TUITION FOR PUPILS IN OTHER DISTRICTS

AN ACT to amend and reenact section 15-40.2-03 of the North Dakota Century Code, relating to the tuition calculations for school districts educating pupils in other districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-03. Tuition payments. Except as provided in section 15-40.2-04, school districts educating pupils in other school districts shall pay the full cost of education incurred by the receiving district. ~~Such~~ The costs must be determined on the basis of the district's full-time equivalent average daily membership and must include annual expenditures from the general fund and annual educational expenditures from all special funds; provided, that only those expenditures permitted in determining the educational cost per pupil in section 15-40.1-06 may be included in determining ~~average~~ the receiving district's current operating expenses. To ~~such average~~ the district's current operating expense ~~in the county~~ for kindergarten, elementary, or high school students, as the case may be, except special education students where a fair rental charge for each student for capital outlay must be determined by the department of public instruction, must be added the statewide total of all school districts' annual expenditures from sinking and interest funds, plus the statewide total of all school districts' annual tax receipts to the building funds, including any amounts expended from school districts' general funds for capital outlay, divided by the average daily membership of the state. From this amount, the following must be deducted for each individual pupil:

1. Such payments as are received for that pupil from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from the amounts provided for in subsection 3 of section 15-40.1-06; and

2. A credit applied for any school taxes paid to the admitting district by the parent or guardian of the admitted pupil.

The amount remaining is the tuition charge for the individual pupil, and must be paid under this chapter.

~~The amount calculated for kindergarten students must be one-half of the amount calculated for elementary students.~~

If the district of residence and the parent or guardian are both paying tuition, the credit allowed under this section for taxes paid to the admitting

district by the parent or guardian must be credited to the district of residence and the parent or guardian in proportion to the amount of tuition paid by each.

Nothing contained in this chapter affects the right of a school district to charge and collect such tuition as may be fixed by agreement from pupils who are not residents of this state, in accordance with section 15-40.2-10.

Approved April 2, 1993
Filed April 2, 1993

CHAPTER 198

HOUSE BILL NO. 1120
(Education Committee)
(At the request of the Superintendent of Public Instruction)

CHILD PLACEMENT TUITION RESPONSIBILITY

AN ACT to amend and reenact section 15-40.2-08 of the North Dakota Century Code, relating to determination of the school district liable for tuition in cases of child placements for purposes other than education; and to repeal section 15-40.2-08.1 of the North Dakota Century Code, relating to placement of handicapped students for reasons other than education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-08. Residency determination and the payment of tuition in cases of ~~foster care~~ child placements for purposes other than education.

1. For purposes of applying this chapter, the school district in which a child resides must be construed to be the district of residence of such child:

   a. At the time ~~any court order or~~ an order of a state court, tribal court, or juvenile supervisor ~~shall have been issued requiring~~ requires such child to stay for any prescribed period at a state-licensed foster home, or ~~home maintained by any nonprofit corporation, or any referrals made from a state-operated institution~~ state-licensed child care home or facility;

   b. At the time of any placement for any prescribed period of time by a county or state social service agency with the consent of the parent or guardian at a state-licensed foster home ~~or home maintained by any nonprofit corporation~~, or state-licensed child care home or facility; or

   c. At the time of a placement to or from a state-operated institution; or

   d. At the time of any voluntary admission to a state-licensed child care home or ~~agency~~ facility or state-operated institution.

2. The district of residence shall be liable for ~~tuition~~:

   a. Tuition upon claim of the admitting district~~; provided, that both the district of residence and the admitting district be notified of the placement, admission, or court order at the time the same is ordered. Notification must be made by the placement agency~~.

b. Tutoring services upon claim of the admitting facility, provided that the tutoring services are delivered by a certified and qualified teacher according to rules established by the superintendent of public instruction.

3. Where the guardian, parent, or parents of the child were residents of the district at the time of placement under subdivisions a through e d of subsection 1, but such guardian, parent, or both parents have subsequently moved to another school district within North Dakota, then the tuition due the admitting district must be paid by the district of residence of the guardian, parent, or parents. If the ~~child does not have a~~ guardian, parent, or parents have moved to another state ~~residing in North Dakota~~, or if parental rights have been terminated, then the tuition due the admitting district must be paid by the state from funds appropriated by the legislative assembly for the foundation aid program.

4. In the event of a voluntary admission to any state-licensed child care home or ~~agency~~ facility or state-operated institution, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. ~~The~~ Within fifteen days, the three-member committee referred to in section 15-40.2-05~~,~~ shall ~~within fifteen days~~ consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges.

5. ~~Those provisions of section 15-40.2-05 relating to multicounty districts, notification of unpaid tuition, and withholding of state payments apply to this section.~~ If the district of residence does not pay the required tuition, the admitting district or facility shall notify the superintendent of public instruction, and upon verification that such tuition payments are in fact due and are unpaid, an amount equal to the unpaid tuition must be withheld from payments for foundation aid to the district of residence of the pupil until the tuition due has been fully paid.

6. An amount equal to the state average per-pupil elementary or high school costs, depending on the educational level of the student, is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per-pupil cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid by the state from funds appropriated for special education in the case of a student with disabilities, or from funds appropriated for foundation aid in all other cases.

7. a. The placement agency shall provide written notice by registered mail of a placement made under court order or in an emergency to the superintendent of the district of residence and the superintendent of the admitting district within five working days after the placement.

b. Except as provided in subdivision a, the placement agency shall provide written notice by registered mail of a placement to the superintendent of the district of residence and the superintendent of the admitting district at least ten working days before the placement.

c. The placement agency shall afford the district of residence reasonable opportunity to participate in permanency planning for the child.

SECTION 2. REPEAL. Section 15-40.2-08.1 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 199

SENATE BILL NO. 2490
(Senator Mutch)

OUT-OF-STATE SCHOOL ATTENDANCE

AN ACT to amend and reenact section 15-40.2-09 of the North Dakota Century Code, relating to the attendance of students in public schools or institutions of bordering states.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.2-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance when district annexed or reorganized.** Students may attend a school in a bordering state under the following circumstances:

1. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which such student resides may contract with the bordering state for the education of such student.

2. A student who resides within a school district which is annexed to or reorganized with another district or districts, and who attended a school district in a bordering state during the ~~immediately preceding~~ 1990-91 school year, shall be permitted to attend or continue attending school in the district in the bordering state.

3. A student who resides within a school district that is annexed to or reorganized with another district or districts, and whose sibling attended an out-of-state school during the 1990-91 school year, shall be permitted to attend school in the district the sibling attends in the bordering state.

If the school board of the district in which the student resides denies a request for attendance in another state, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision shall be final. ~~In the event that the district does not comply with a decision requiring that tuition charges be paid, state payments shall be withheld as provided in section 15-40.2-05.~~

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[1] NOTE: Section 15-40.2-09 was also amended by section 5 of House Bill No. 1045, chapter 45, and by section 3 of House Bill No. 1158, chapter 194.

~~Payments must be made to the school district or institution in the bordering state for state foundation aid for students attending out-of-state schools under a reciprocal agreement based on actual enrollment for that year. Payments will be determined as provided in section 15-40.1-07 or 15-40.1-08 based on the weighting factor of the student's district or residence. The remainder of the pupil's tuition as determined under section 15-40.2-10 shall be paid by the district of the pupil's residence~~ Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of residence is entitled to reduce the tuition payment to an out-of-state school by an amount commensurate with the tuition cost the district would be entitled to receive as compensation for a student from the out-of-state district enrolled in its school. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.

This section shall not be construed to require the district of residence to provide ~~pupil~~ student transportation, or payments in lieu thereof, for ~~pupils~~ students for whom the payment of tuition has been approved.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 200

HOUSE BILL NO. 1438
(Representatives Huether, Boucher, Dalrymple, Gates, Goffe, Wardner)

SCHOOL OPEN ENROLLMENT

AN ACT to establish a statewide open enrollment program allowing elementary and high school students to attend school in a district other than their school district of residence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Open enrollment - Procedure. A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than January first of the school year preceding the year of enrollment, apply to the school board of the student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By February first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By March first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section.

SECTION 2. Grounds for disapproval - Exception. Except as provided in section 4 of this Act, the board of the district of residence may deny an application under section 1 of this Act only if the application will result in a reduction of the number of students enrolled in the district by more than twenty percent of the average daily membership the previous school year. However, if denying an application would result in the enrollment of children from the same nuclear family in different school districts, the school board of the district of residence may not deny the application. A student attending school in another district and having tuition paid as provided for in section 15-40.2-06 during the 1993-94 school year may enroll in a school district other than the student's school district of residence under the provisions of this Act, without being considered a

student in average daily membership the previous year in the student's school district of residence.

SECTION 3. Enrollment - Foundation aid - Tuition apportionment. Once enrolled in the admitting district, the student remains enrolled in the admitting district until the student graduates, moves, the student's parent or legal guardian applies for enrollment in another school district, or the student's parent or legal guardian notifies the student's school district of residence that the student will attend school in the school district of residence the following year. Payment for foundation aid shall be made in accordance with chapter 15-40.1. For purposes of tuition apportionment payments, a student whose application is approved under this section is considered a resident of the admitting district. Except as specifically provided in this Act, the provisions of chapter 15-40.2 do not apply to students involved in open enrollment.

SECTION 4. Enrollment - Students with disabilities - Additional costs. If an application under section 1 of this Act is approved for a student with a disability, the school board of the district of residence shall pay to the admitting district the costs incurred by the admitting district in providing education and related services to the student with a disability up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level. The state is liable for any costs in excess of this amount.

SECTION 5. Open enrollment - Transportation. The district of residence of a student participating in open enrollment under this Act has no obligation to provide transportation. However, the district of residence may enter into a transportation arrangement with the admitting district as provided in section 15-34.2-02.

SECTION 6. Local school boards - Standards. Each school board shall adopt standards for the acceptance and rejection of applications for open enrollment as provided in section 1 of this Act. The standards may include the capacity of a program, class, grade level, or school building. The standards may not include previous academic achievement, participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings. The school board of the admitting district may determine that the district may not accept applications for open enrollment under this Act. A school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly or indirectly exert influence upon the student or the student's family, in order to encourage participation in the open enrollment program for the purpose of having the student participate in varsity athletic activities. However, any student who participated in varsity athletic activities during the 1992-93 school year, at a school in a district other than the student's district of residence or at a school outside the boundary within which the student would normally attend school may continue to participate in varsity athletics at that school for the duration of the student's high school career.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 201

SENATE BILL NO. 2361
(Senator Grindberg)
(Representatives A. Carlson, Austin)

ELECTION OFFICERS AND BALLOTS

AN ACT to amend and reenact sections 15-47-06, 16.1-05-01, 16.1-05-02, 16.1-05-03, 16.1-05-04, 16.1-05-05, 16.1-06-04, 16.1-06-16, 16.1-06-18, 16.1-06-21, 16.1-07-06, 16.1-07-08, 16.1-07-09, 16.1-07-10, 16.1-11-22, 16.1-11-24, 16.1-11-31, 16.1-13-22, 16.1-15-02.1, and 16.1-15-08 of the North Dakota Century Code, relating to election officers and election ballots; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts. An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall count and canvass the votes for each office and within ~~twenty-four~~ forty-eight hours after the polls are closed, the returns must be signed by the judges and clerks of the election and filed with the business manager of the school district. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by the candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by the candidates. A record of the proceedings must be made in the records of the business manager of the district. The school board shall canvass all election returns and shall declare the result of any election within three days of the election, and in the case of a tie, within three days of the breaking of the tie pursuant to this section. The result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent voters' ballots must be available in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

SECTION 2. AMENDMENT. Section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-01. Election officers. At each primary, general, and special statewide or legislative district election, and at county elections, each polling place ~~shall~~ must have an election board in attendance. The election board ~~shall~~ must consist of an election inspector and at least two election judges.

1. The election inspector ~~shall~~ must be selected in the following manner:

   a. In all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and ~~shall~~ fill all vacancies occurring in those offices.

   b. In all other precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and ~~shall~~ fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.

   c. The election inspector shall serve ~~a term of two years~~ until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy ~~shall be filled for that election by the auditor. Prior to the next election, the appropriate appointing body or county auditor shall fill the vacancy for the remainder of the term~~.

   Except in the case of special elections, all appointments required to be made under this section ~~shall~~ must be made at least twenty-one days preceding an election.

2. The election judges for each precinct are the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected, and representing the two parties that cast the largest and next largest number of votes in the state at the last general election. If for any reason a precinct committeeman does not wish to serve as an election judge, the ~~committeeman~~ district party chairman for that committeeman's party shall appoint from the committeeman's precinct a member of the committeeman's party to serve as election judge. ~~If the appointment is not made, the position must be filled by appointment by the district party chairman.~~ Each election judge must be given a certificate of appointment signed by the chairman of the district committee of the judge's party. In voting precincts or districts in which over one thousand votes are cast in any election, the county auditor may request each district party chairman to appoint an additional election judge. The district ~~committee~~ party chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least twenty-one days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the ~~judge~~ judges. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that ~~either of the~~ any election ~~judges~~ judge or ~~any~~ poll clerk is disqualified under this chapter, the inspector shall remove that judge or clerk at once and shall fill the vacancy by

appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.

3. Poll clerks ~~shall~~ must be appointed by the ~~election judges~~ district party chairmen. Each ~~election judge~~ district party chairman may appoint one poll clerk. However, in voting precincts or districts in which over three hundred votes are cast in any election, ~~election judges~~ the district party chairmen may each appoint ~~one~~ additional poll ~~clerk~~ clerks as determined by the county auditor. The appointment of poll clerks by the ~~election judges shall~~ district party chairmen must be made on the basis of the prospective clerks' knowledge of the election procedure and ability to write legibly. ~~All election precincts that use voting machines as authorized in chapter 16.1-06 may, in addition to all other authorized poll clerks, have as many as two additional poll clerks appointed by each election judge. The additional poll clerks shall be appointed on the same basis as other poll clerks.~~

SECTION 3. AMENDMENT. Section 16.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-02. Qualifications of members of the board of election - Oath of office.

1. Every member of the election board and each poll clerk must be a qualified elector of the precinct in which ~~he~~ the person is assigned to work and must be eligible to vote at the polling place to which ~~he~~ the person is assigned.

2. No person may serve as a member of the election board or as a poll clerk who:

   a. Has anything of value bet or wagered on the result of an election.

   b. Is a candidate in the election at which ~~he~~ the person is serving.

   c. Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in the election at which ~~he~~ the person is serving.

3. Prior to assuming their duties, all members of the election board and the poll clerks severally shall take and subscribe an oath in substantially the following form:

   I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

   ~~Such~~ The oath may be taken before any officer authorized by law to administer oaths, and in case no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to

each other and to the poll clerks. The person administering the oath shall cause an entry thereof to be made and subscribed by ~~him~~ that person and prefixed to ~~the~~ each pollbook.

4. A person serving as a member of the election board shall, prior to each election, attend a period of instruction conducted by the county auditor or his designated representative, provided that such period of instruction has been conducted since the appointment of the election judges or election inspector.

5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a person to serve in the absent person's place. In filling a vacancy in the office of election judge or clerk, the remainder of the board shall select a person of the absent person's political party if such a person is reasonably available. The office of election inspector may be filled by any qualified person without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall orally elect a board as nearly as possible in conformity with the provisions of this section. ~~If any poll clerk fails to appear at the opening of the polls, the election judge who appointed the absent clerk may appoint a person from the same political party to fill the vacancy.~~

SECTION 4. AMENDMENT. Section 16.1-05-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-03. Secretary of state and county auditors to distribute election information - County auditor to provide instruction.

1. Not less than thirty days before any primary, general, or special election, the secretary of state shall provide an instruction manual approved by the attorney general, which in layman's terms presents in detail the responsibilities of each election official. The secretary of state shall forward sufficient copies of this manual to each county auditor who shall distribute ~~them~~ the manuals to each member of all the election boards in the county.

2. ~~Not more than twenty days, but at~~ At least three days before each primary~~,~~ and general~~, or special statewide or legislative district~~ election, each county auditor or the auditor's designated representative shall conduct ~~one or, at the auditor's option, two~~ training sessions on election laws and election procedures for election officials in the county and may conduct training sessions at least three days before any special statewide or legislative district election. The session or sessions must be conducted at such place or places throughout the county as the county auditor determines to be necessary. Attendance at the session is mandatory for members of the election board and for poll clerks unless the board of county commissioners ~~of the county~~ determines that the poll clerks in that county may not attend. The county auditor shall notify the members of the election boards, poll clerks if applicable, and the state's attorney of the time and place of the session. The state's attorney shall attend all sessions to give advice on election laws. The county auditor shall invite the district chairman in that county representing any

political party casting at least five percent of the total votes cast for governor at the last election to attend the session at the chairman's own expense. On the date of such course or courses, the county auditor may deliver to all election inspectors at such meeting the official ballots~~, suitable manila envelopes,~~ and all other materials as provided in chapter 16.1-06. Except as otherwise provided in this section, each person attending the course or courses must be compensated as provided in section 16.1-05-05.

3. An election official, at the option of the county auditor, may be required to attend only two training sessions on election laws within a twelve-month period. If an election official has attended a training session within the six months preceding an election, the election official must be compensated at the pay appropriate for those having attended a training session, as provided in section 16.1-05-05, for that election.

SECTION 5. AMENDMENT. Section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.

2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.

3. The election inspector shall assign ~~two~~ the poll clerks, ~~one~~ an equal number from each political party represented on the election board, to perform the function of maintaining the pollbooks. The ~~two~~ designated poll clerks shall ~~each~~ maintain ~~a pollbook~~ the pollbooks. Each pollbook must contain the name and address of each person voting at the precinct, and must be arranged in the form and manner prescribed by the secretary of state.

4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector.

5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.

6. All members of the election board shall distribute ballots and other election materials to electors. ~~Both~~ An election ~~judges~~ judge from each party represented on the election board shall ~~together~~ give any assistance requested by electors in marking ballots or operating voting machines. The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes.

7. Each member of the election board shall maintain order in the polling place.

8. All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.

SECTION 6. AMENDMENT. Section 16.1-05-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-05. Compensation of election officers - Commissioner of labor to certify minimum wage applicable to election officials - Secretary of state to certify amount to county auditors. The state commissioner of labor, thirty days before each statewide primary, general, or special election, shall determine the state minimum wage applicable to election inspectors, election judges, poll clerks, or any other private individual who performs duties in the election process, and shall certify the amounts to the secretary of state. The secretary of state shall then certify the amounts to the county auditors. ~~As required by this title, the~~ The county auditors shall pay at least the amounts so determined to the relevant election officials. Members of the election board and poll clerks who attend the training sessions provided by section 16.1-05-03 must be paid at least the wage determined by the state commissioner of labor for the hours in attendance in the session in addition to necessary expenses and mileage~~; however, for poll clerks, and for judges the combined wages for the training sessions and election may not exceed sixty dollars or any greater amount as determined by the board of county commissioners~~. State, county, or other election officials who are required to incur expenses while performing duties in the election process may be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 54-06-09, 44-08-04, and 11-10-15. Other persons performing election duties must also be paid for expenses and mileage in like manner and amounts. Members of election boards who attend the training sessions provided by section 16.1-05-03 must be paid at least twenty-five percent more than the minimum wage determined in this section, during the time spent in the performance of their election duties.

SECTION 7. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under ~~the provisions of~~ this title for use in precincts in which voting machines or electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.

2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.

3. Be of sufficient length to contain the names of all candidates to be voted for at ~~such~~ that election.

4. Have the language "Vote for no more than _____ name (or names) ~~only~~" placed immediately under the name of each office.

5. Have printed thereon "Place a crossmark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on

the ballot write or paste that person's name in the blank space provided for that purpose."

6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.

7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark ~~his~~ the voter's choice for each candidate opposite the name of ~~such~~ that candidate, and ~~such~~ the space must precede or follow the candidate's name on the same line in a uniform manner.

8. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted."

Any precinct ~~which~~ that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems purchased after June 30, 1985, are used, the ballot card must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot card must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.

SECTION 8. AMENDMENT. Section 16.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time. For each election precinct in the county, the county auditor shall provide the number of ballots the auditor determines to be necessary. Each county auditor shall:

1. Have the ballots printed at least fifteen days ~~prior to~~ before the election, and the ~~same~~ ballots may be inspected by any person at the auditor's office.

2. Deliver to the inspector in each precinct at least three days but not more than fifteen days ~~prior to~~ before the election the number of ballots ~~and blank forms of,~~ pollbooks, blanks for election returns with the proper captions if ballots are to be hand counted, forms of oaths and certificates, ~~and~~ tally sheets necessary to carry out ~~the provisions of~~ this title, and other election supplies as the county auditor determines necessary.

SECTION 9. AMENDMENT. Section 16.1-06-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-18. Delivery of ballots ~~and manila wrappers~~ - Official stamp delivered. At the meeting provided for in section 16.1-05-03, the county auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available~~, together with suitable manila wrappers. Such~~. The ballots ~~and manila wrappers~~ must be delivered in sealed packages marked plainly on the outside designating the number of ballots enclosed and the precinct for which ~~they~~ the ballots are intended. The county auditor ~~also~~ shall deliver or cause to be delivered to ~~such~~ the inspector, or if that is impracticable, to one of the election judges of ~~such~~ the precinct, a stamp ~~with an~~ and inkpad for the purpose of stamping each ballot with the words "official ballot" and the name or number of the precinct, the name of the county, the date of the election, and providing for a blank line preceded by the word "initials" for the purpose of providing a space where the judge or inspector shall ~~place his initials. He also~~ initial the ballot. The stamp and inkpad are not required if that information is preprinted on the ballot. The county auditor shall deliver or cause to be delivered ~~a manila wrapper and~~ a suitable seal for the purpose of wrapping and sealing the stamp and inkpad at the close of the voting but ~~prior to~~ before the counting of the ballots~~. He~~ if a stamp is required. The county auditor also shall deliver or cause to be delivered a suitable seal, which has the name of the county inscribed thereon, for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

SECTION 10. AMENDMENT. Section 16.1-06-21 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-21. Pollbooks delivered by county auditor - Contents - Inspector of elections to deliver. The county auditor ~~of each county~~ shall see that two copies of the new pollbook are delivered to the election inspector in each election precinct in the county. ~~Each~~ The following information must be provided to the inspector, and may be contained in each new pollbook ~~must contain~~:

1. A copy of the law prescribing the qualifications of electors.
2. A copy of the provisions of this title relating to the duties of inspectors, judges, and clerks of election.
3. A statement of the penalties imposed for offenses against the election laws.
4. Blanks for all entries required to be made ~~therein~~ in the pollbook, or a preprinted listing of previous voters and blanks for the entry of new voters.

The election inspector shall deliver the pollbooks, or cause ~~them~~ the pollbooks to be delivered, to the clerks of election in ~~his~~ the inspector's precinct on election day ~~prior to~~ before the opening of the polls.

SECTION 11. AMENDMENT. Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-06. Application form.

1. Application for an absent voter's ballot must be made on a blank furnished by the proper officer of the county, city, or school district ~~of~~ which the applicant is an elector, or on any blank containing the ~~required~~ following information ~~and in substantially the following form~~:

~~I, _____, a duly qualified elector of the township of _____, or of the _____ precinct of the _____ ward and residing at _____ in the city of _____ of the county of _____ of the state of North Dakota, to my best knowledge and belief entitled to vote in such precinct at the next election, hereby make application for an official absent voter's ballot to be voted by me at such election. I understand that it is a criminal offense to make a false statement in order to obtain an absentee ballot.~~

~~I have resided in my precinct for at least thirty days.~~

~~My phone number is _____.~~

~~Dated this _____ day of _____, 19__.~~

~~_____~~
~~(signature of applicant)~~

~~_____~~
~~(mailing address)~~

a. The applicant's name.

b. The applicant's voting address.

c. The applicant's mailing address.

d. The applicant's current home telephone number.

e. The election for which the ballot is being requested.

f. The applicant's reason for voting absentee as specified in section 16.1-07-01.

g. The date of the request.

h. An affirmation that the applicant has resided in the precinct for at least thirty days.

i. The applicant's signature.

2. A qualified elector ~~who is~~ absent from the state is not required to file an application for an absent voter's ballot for ~~a primary or general~~ any statewide election if either of the following apply:

   a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine.

   b. The elector is a United States citizen living outside the United States.

   If the qualified elector furnishes the county auditor with a current mailing address and the elector's local residence or precinct, the county auditor shall mail to the qualified elector a ballot with a return

envelope and instructions for voting~~. The county auditor may maintain a list of the qualified electors receiving a ballot for the primary election and may mail those electors a ballot~~ for ~~the next general~~ any statewide election in that calendar year.

SECTION 12. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Inability of elector to sign name.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor ~~of the city~~, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements ~~hereinafter~~ set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

2. If there is more than one ballot to be voted by an elector of ~~such~~ the precinct, one of each kind ~~shall~~ must be included and an envelope ~~shall~~ must be enclosed with ~~such~~ the ballot or ballots. ~~Such~~ The front of the envelope ~~shall~~ must bear ~~upon the front thereof~~ the ~~name,~~ official title~~,~~ and post-office address of the officer supplying the voter with the ballot, and upon the other side a printed statement in substantially the following form:

State of _____)
}ss.
County of _____)

I, _____, under penalty of possible criminal prosecution for making a false statement, do solemnly swear that I am a resident of the township of _____, or of the _____ precinct of the _____ ward in the city of _____, residing at _____ in said county, county of _____ and state of North Dakota, and entitled to vote in such precinct at the next election; that I expect to be absent from the ~~said county~~ precinct of my residence on the day of ~~holding such~~ the election or that by reason of physical disability I am unable to attend at the polling place for ~~such~~ the election, and that I will have no opportunity to vote in person on that day.

_____

If ~~such~~ the absent voter is unable to sign ~~his~~ the voter's name, ~~he~~ the voter shall ~~make his~~ mark (X) that statement in the presence of a disinterested person. ~~Such~~ The disinterested person shall print the name of the person marking ~~his~~ the X below the X, and shall sign ~~his~~ that person's own name following the printed name with the notation "witness to ~~his~~ the mark".

SECTION 13. AMENDMENT. Section 16.1-07-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-09. Canvassing of mailed absent voters' ballots received late. In the case of congressional, state, county, city, or school district elections, if an envelope postmarked ~~prior to~~ by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ~~same~~ ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at ~~such~~ the time ~~as~~ the returns are canvassed. Any envelope without a postmark by the United States postal service or other mail delivery system or with an illegible postmark and containing an absentee voter's ballot must be received by mail by the proper officer within ~~twenty-four~~ forty-eight hours after the closing of the polls on election day ~~in order~~ to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time ~~prior to four~~ before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding ~~such~~ the ballot shall print the date and hour of receipt on the envelope. Upon receipt, the canvassing board shall first determine that the elector was qualified to vote in that precinct and that the elector did not previously vote in that precinct on the date of the election before allowing ~~such~~ the ballot to be tallied.

SECTION 14. AMENDMENT. Section 16.1-07-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-10. Care and custody of ballot. Upon receipt of an envelope containing the absent voter's ballot, the proper officer ~~forthwith~~ immediately shall ~~enclose the same unopened, together with~~ attach the written application of ~~such~~ the absent voter~~, in a larger envelope which must be~~ and file the ballot with other absentee ballots from the same precinct. Before delivering the absentee ballots to the precinct, the proper officer shall package the ballots in a manner so the ballots are sealed securely ~~and~~. The package must be endorsed with the name of the proper voting precinct, the name and official title of the officer, and the words "This ~~envelope~~ package contains an absent voter's ballot and must be opened only on election day at the polls while the ~~same~~ polls are open." ~~Such~~ The officer shall keep the ~~envelope~~ package safely in ~~his~~ the officer's office until it is delivered by ~~him~~ the officer as provided in this chapter.

SECTION 15. AMENDMENT. Section 16.1-11-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one party. At the primary election there may be only one ballot for all parties or principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot", and the title must be printed at both ends of the ballot so there is an upright title no matter which way the ballot is held.

2. Each party or principle having candidates at the primary election ~~shall~~ must have a separate column on the ballot; the columns must be separated by a solid six-point rule.

3. At the head of each column must be printed the name of the political party or principle which it represents.

4. In each column below the party or principle title must be printed: "You may vote for the candidates of only one party at the primary election. If you vote for candidates of more than one party, your ballot will be rejected."

5. Immediately below the warning against voting for candidates of more than one party must be printed: "Put a crossmark (X) opposite the name of the candidate for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."

6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of each office in the center of each party column at the head of the names of the aspirants for the office.

7. Immediately under the name of each office must be printed: "Vote for no more than _____ name (or names) ~~only~~."

8. At the side of the name of each aspirant and in a column must be printed a square or other figure for making a crossmark or other mark. No squares or other figures may be printed at the head of the ballot.

9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon ~~shall~~ must have the left-hand column, and the party or principle casting the next largest vote ~~shall~~ must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if ~~he~~ the voter votes for candidates of more than one party ~~his~~ the voter's ballot will be rejected.

SECTION 16. AMENDMENT. Section 16.1-11-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-24. No-party primary ballot - Contents. There must be a separate ballot at all primary elections which must be entitled "no-party primary ballot". The names of aspirants for nomination to each office must be arranged on the no-party primary ballot in separate groups in their order. In precincts in which voting machines are used, the list of offices and candidates must be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 must be placed ~~thereon~~ on the ballot without party designation.

Immediately under the name of each office must be placed the language, "Vote for no more than _____ name (or names) ~~only~~." The number inserted must be the number to be elected to the office at the next succeeding general election.

SECTION 17. AMENDMENT. Section 16.1-11-31 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-31. Tally books or sheets provided for election precincts - Form and contents. Two tally books or two sets of tally sheets must be provided for each voting precinct not using electronic ballot counters. The books or sheets must contain a column for each political party or principle having candidates to be voted for at the voting precinct. Two tally books or two sets of tally sheets for candidates on the no-party ballot must be provided for each voting precinct. The books or sheets must be furnished by the county auditor at the same time and in the same manner as the pollbooks and ballots are furnished. The names of the candidates must be placed on the tally books or sheets in the order in which they appear on the official sample ballot, and, as appropriate, must have the proper party or no-party designation at the head thereof.

SECTION 18. AMENDMENT. Section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-22. Delivering ballot to elector - Stamping. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot or ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. The ballot is considered stamped if it is either stamped with a stamp and an inkpad or has the stamped information preprinted on the ballot, as provided in section 16.1-06-18.

2. When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election inspector or judge, the ballot card and ballot envelope may not be deposited in the ballot box, but must be marked spoiled and placed with the other spoiled ballots.

3. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the ballot or votes for candidates of more than one party the elector's ballot will be rejected.

4. Before delivering any ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot or ballot card and ballot envelope, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall ~~write his or her initials thereon~~ initial the ballot. Failure to stamp and initial a ballot or ballot card in the proper place does not invalidate ~~such~~ the ballot or ballot card, but a complete failure to stamp and initial a ballot or ballot card does invalidate the ballot or ballot card. Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that

has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.

SECTION 19. AMENDMENT. Section 16.1-15-02.1 of the North Dakota Century Code is amended and reenacted as follows:

[1] **16.1-15-02.1. Alternative method for canvassing election for counties using electronic voting systems or electronic counting machines - County ~~canvassing~~ resolution board.** At the option of the county auditor in any county using electronic voting systems or electronic counting machines, the county ~~canvassing~~ resolution board, in lieu of the election boards, shall canvass the votes for those precincts using either device. The county auditor shall select the county resolution board, which must consist of one independent representative and an equal number of representatives from each political party represented on the election board. The board shall canvass the votes in the same manner as required for the election boards insofar as those provisions of law are applicable. The auditor shall notify the county ~~canvassing~~ resolution board of this duty not less than one week ~~prior to~~ before the election. This procedure is in addition to the canvass of returns that the county canvassing board must perform as provided in this chapter.

SECTION 20. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to ~~county judge or magistrate~~ clerk of the district court. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the ~~inspector and election judges~~ election board shall cause the ballots of each kind cast at the election to be ~~smoothly spread upon~~ placed in a suitable wrapper ~~of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded~~ to form a complete wrapper for the ballots. The ballots and wrappers must then be ~~folded tightly together and the wrapper must be pasted or glued securely~~ tightly secured at the outer end to completely envelop and hold the ballots together. Ballots ~~which~~ that are void must be ~~wrapped~~ secured in a separate wrapper and must be marked "void". Ballots ~~which~~ that are spoiled must be separately ~~wrapped~~ secured and marked "spoiled". In ~~folding and~~ sealing ballots, the various classes of ballots must be kept separate. ~~The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper.~~ Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and ~~together with~~ the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned ~~either~~ in person ~~or by mail~~ to the ~~county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07~~ clerk of the district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be ~~wrapped,~~ sealed~~,~~ and returned as provided in this section.

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[1] NOTE: Section 16.1-15-02.1 was also amended by section 2 of House Bill No. 1457, chapter 210.

SECTION 21. AMENDMENT. Section 16.1-15-08 of the North Dakota Century Code, as amended by section 54 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

[2] **16.1-15-08. Wrapping and returning of ballots to ~~district judge or magistrate~~ clerk of the district court.** After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the ~~inspector and election judges~~ election board shall cause the ballots of each kind cast at the election to be ~~smoothly spread upon~~ placed in a suitable wrapper ~~of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded~~ to form a complete wrapper for the ballots. The ballots and wrappers must then be ~~folded tightly together and the wrapper must be pasted or glued securely~~ tightly secured at the outer end to completely envelop and hold the ballots together. Ballots ~~which~~ that are void must be ~~wrapped~~ secured in a separate wrapper and must be marked "void". Ballots ~~which~~ that are spoiled must be separately ~~wrapped~~ secured and marked "spoiled". In ~~folding and~~ sealing ballots, the various classes of ballots must be kept separate. ~~The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper.~~ Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and ~~together with~~ the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned ~~either~~ in person ~~or by mail~~ to ~~a district judge serving the county or to a magistrate appointed by the presiding judge of the judicial district~~ the clerk of the district court. Ballots used with any electronic voting system or counted by an electronic counting machine must be ~~wrapped,~~ sealed~~,~~ and returned as provided in this section.

SECTION 22. EFFECTIVE AND EXPIRATION DATES. If section 54 of chapter 326 of the 1991 Session Laws of North Dakota becomes effective, section 20 of this Act is effective until January 2, 1995, and after January 1, 1995, is ineffective, and section 21 of this Act becomes effective on January 2, 1995. If section 54 of chapter 326 of the 1991 Session Laws of North Dakota does not become effective, section 21 of this Act does not become effective.

Approved April 12, 1993
Filed April 12, 1993

[2] NOTE: Section 16.1-15-08 was also amended by section 4 of House Bill No. 1105, chapter 142.

CHAPTER 202

HOUSE BILL NO. 1235
(Representatives Drovdal, Kempenich, Byerly)
(Senators Bowman, Kelsh)

SCHOOL CONTRACT BIDS

AN ACT to amend and reenact section 15-47-15 of the North Dakota Century Code, relating to the acceptance of bids for school contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty. ~~No~~ Except as provided in this section, a school board may not enter into a contract involving the expenditure of an aggregate amount greater than eight thousand dollars~~, except as hereinafter set forth, may be entered into by any school district of any kind or class except upon sealed proposals and to the lowest responsible bidder after~~ unless the school board has given ten days' notice by at least one publication in the official newspaper of the school district, received sealed bids, and accepted the bid of the lowest responsible bidder who in the opinion of the school board will best serve the interests of the school district. The provisions of this section do not apply to ~~any of the following classes of~~ contracts for:

1. ~~For personal~~ Personal services of employees of the district.
2. ~~For school~~ School text or reference books.
3. ~~For any article which is~~ Articles not ~~for sale~~ sold on the open market.
4. ~~For any patented~~ Patented, copyrighted, or exclusively sold ~~device~~ devices or ~~feature~~ features required to match articles already in use.
5. ~~For any patented~~ Patented, copyrighted, or exclusively sold ~~article of~~ articles so distinctive ~~a nature~~ that only one ~~make of the article~~ brand can be purchased.
6. ~~Any building contract~~ Building.
7. ~~For school~~ School transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor using the procedure described in ~~accordance with~~ section 15-34.2-07.1.
8. ~~For~~ The purchase of heating fuel which is ~~purchased under a directly negotiated contract provided~~ made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1 ~~for transportation and vehicle fuel is followed~~.

Such exceptions must be strictly construed. ~~Every~~ Any member of a school board who participates in a violation of this section is guilty of a class B misdemeanor.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 203

SENATE BILL NO. 2461
(Senators Jerome, Evanson)

SCHOOL SUPERINTENDENT RENEWAL

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to nonrenewal of superintendents' contracts; and to amend and reenact section 15-47-26 and subsections 2 and 5 of section 15-47-38 of the North Dakota Century Code, relating to the definition of a teacher and nonrenewal or discharge of a teacher.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-26. "Teacher" defined. The term "teacher", as used in ~~sections 15-47-27 and~~ section 15-47-28, ~~must be construed to include~~ includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. The term "teacher", as used in ~~section~~ sections 15-47-27 and 15-47-38, ~~must be construed to include~~ includes all teachers, ~~and~~ principals, ~~superintendents,~~ assistant superintendents, and ~~chief administrators of multidistrict special education units and area vocational and technology centers in all public school districts within this state, and~~ all persons employed in teaching in any state institution, except institutions of higher education. For purposes of the sections above referenced, the term "teacher" does not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

SECTION 2. AMENDMENT. Subsections 2 and 5 of section 15-47-38 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher must be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher must also be informed in writing of the teacher's right to demand a specification of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The reasons must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the

board in writing at least two days prior thereto that the teacher will contest the charges brought against the teacher, the board must sustain the charges with evidence produced at the hearing with witnesses who are subject to cross-examination by the teacher or the teacher's representative. A witness, if a minor, must be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce witnesses as may be necessary to refute the charges, which witnesses are subject to cross-examination. All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, appeals to the supreme court, and other administrative procedures must be conducted in accordance with chapter 28-32. The meeting must be an executive session of the board unless both the school board and the teacher requesting the meeting shall agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and~~, unless the subject of the contemplated discharge,~~ the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests, the board must grant a continuance of not to exceed seven days unless good cause is otherwise shown. No cause of action for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. The teacher must be informed in writing of the time, which may not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher must also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's overall performance. Each district shall have an established system through which written evaluations are prepared for every teacher employed by the district as provided in section 15-47-27. The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must be related to the ability, competence, or qualifications of the teacher or the necessities of the district such as lack of funds calling for a reduction in the staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The administrator shall substantiate the reasons with written or oral evidence presented at the meeting, unless the administrator is the subject of the contemplated nonrenewal, in which case the board shall substantiate the reasons with written or oral evidence presented at the meeting. All

witnesses are subject to questioning for the purposes of clarification. At the meeting, the board shall discuss the evidence presented. If the reasons for nonrenewal have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting must be an executive session of the board unless both the school board and the teacher agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and~~, unless the subject of the contemplated nonrenewal,~~ the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. At the meeting, if the teacher so requests, the teacher must be granted a continuance of not to exceed seven days. No claim for relief for libel or slander lies for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith is final and binding on all parties. Final notice of the determination not to renew a contract must be given in writing by May first as provided in section 15-47-27.

SECTION 3. A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Evaluation, renewal, or discharge of superintendents of school districts.

1. The term "superintendent" as used in this section includes district superintendents of schools and chief administrators of multidistrict special education units and multidistrict vocational education centers.

2. At least once before December fifteenth, the school board of each school district shall conduct a formative evaluation of the performance of the superintendent employed by the district. The board shall also conduct a formal and written evaluation of the performance of the superintendent by March fifteenth and provide a copy to the superintendent. The written evaluation of a superintendent's performance must include recommendations with respect to all subject areas within which the school board considers the performance to be unsatisfactory. The school board must provide in reasonable detail the basis for its assessment of the unsatisfactory performance.

3. The superintendent, upon receipt of an evaluation, may respond in writing to the substance and content of the evaluation, and the response must become a permanent attachment to the superintendent's personnel file. The school board shall meet with the superintendent to discuss the evaluation.

4. Throughout the term of a contract between a school district and a superintendent, the superintendent is subject to discharge for good and just causes as described in subsection 3 of section 15-47-38. However, the school board may not arbitrarily or capriciously require the superintendent's dismissal.

5. If a school district governing body intends to discharge a superintendent, the superintendent must be served with a detailed and written description of the reasons given by the school board for the proposed dismissal. Following service of the written description, the superintendent must be granted a hearing before the governing body for which reasonable advance notice is required. If a superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent.

6. The superintendent may produce necessary witnesses to refute charges made by the board against the superintendent or reasons given by the board for its proposal to discharge the superintendent. The witnesses are subject to cross-examination.

7. All procedures relative to evidence, subpoena of witnesses, oaths, records of testimony, decisions, rehearings, appeals, certification of records, scope and procedures for appeals, and appeals to the supreme court must be conducted in accordance with the provisions of chapter 28-32. The meeting must be conducted in an executive session of the board, unless both the school board and the superintendent agree that the meeting be open to the public.

8. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member, may also attend the meeting.

9. In addition to board members and the business manager of the school district, the school board may be represented by two persons chosen by the school board.

10. If the superintendent requests, the superintendent must be granted a continuance by the board not to exceed seven days, unless good cause for a longer continuance is shown.

11. No claim for relief for libel or slander may accrue from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section.

12. A school board dismissing a superintendent for cause shall report the dismissal to the teachers' professional practices commission. The school board by unanimous vote may suspend the superintendent from regular duty if such action is deemed desirable during the dismissal process. If the superintendent is dismissed, the board may determine the superintendent's salary or compensation as of the date of suspension. If the final decision is favorable to the superintendent, there may be no abatement of salary or compensation.

13. The school board of a school district contemplating the contract nonrenewal of a superintendent who has been employed in the school district as a superintendent for at least two consecutive years, shall notify the superintendent in writing of the contemplated nonrenewal no later than April fifteenth. The school board shall inform the superintendent in writing of the time, which may not be later than April twenty-first, and the place of a special school board meeting for the purpose of discussing and acting upon the contemplated nonrenewal. The

school board shall inform the superintendent in writing of the reasons for nonrenewal. The reasons may not be frivolous or arbitrary, must be related to the ability, competence, or qualifications of the superintendent, must be sufficient to justify the contemplated action of the board, and must be drawn from specific and documented findings arising from the formal and written evaluations of the superintendent's performance as required in subsection 2 of this section, except when the nonrenewal results from a necessary reduction in staff. At the board meeting, the superintendent may produce evidence necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The school board shall substantiate the reasons or cause the reasons to be substantiated with written or oral evidence presented at the meeting. All witnesses are subject to questioning for purposes of clarification. The superintendent may be represented at the meeting by two persons chosen by the superintendent. The superintendent's spouse or one other family member may also attend the meeting. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation must be incurred by the superintendent. In addition to the board members and the business manager of the school district, the school board may be represented by two persons chosen by the board. If the superintendent requests, the board shall grant the superintendent a continuance not to exceed seven days. No claim for relief for libel or slander accrues from any statement expressed orally or in writing at an executive session of the school board held for the purposes provided in this section. The school board shall give the superintendent final notice of the determination not to renew a contract by May first.

14. If a school district fails to provide notification to a superintendent in writing between March first and April fifteenth of each year that the school board intends to contemplate the nonrenewal of the superintendent's contract, and the superintendent has not resigned in writing before June first, the district and the superintendent are deemed to have renewed the contract for a period of one year extending from the termination date set forth in the existing contract. If a school district provides notification to a superintendent who has not been employed in that school district as a superintendent for at least two years in writing before May first of its intent not to renew the superintendent's contract, the school board shall meet with the superintendent to convey the reason or reasons for the nonrenewal if the superintendent requests such a meeting.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 204

HOUSE BILL NO. 1475
(Representatives Wardner, Gorder, Kerzman)
(Senator Marks)

ABORTION REFERRAL AND BIRTH CONTROL

AN ACT relating to abortion referrals and the distribution of birth control devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Abortion referrals. No person while acting in an official capacity as an employee or agent of a public school district may refer a student to another person, agency, or entity for the purpose of obtaining an abortion. This provision does not extend to private communications between the employee or agent and a child of the employee or agent.

SECTION 2. Distribution of birth control devices - Restrictions. No person while acting in an official capacity as an employee or agent of a public school district may distribute birth control devices to a student. This section does not apply to the distribution of a birth control device by an employee or agent to a child of that employee or agent.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 205

HOUSE BILL NO. 1183
(Education Committee)
(At the request of the Superintendent of Public Instruction)

CHILDREN WITH DISABILITIES EDUCATION

AN ACT to amend and reenact sections 15-59-01, 15-59-02.1, 15-59-04, 15-59-04.1, 15-59-05, 15-59-05.2, 15-59-06, 15-59-06.2, 15-59-07, 15-59-07.2, 15-59-10, 15-59.3-01, 15-59.3-02, 15-59.3-03, 15-59.3-04, 15-59.3-05, 15-59.3-06, and 15-59.3-07 of the North Dakota Century Code, relating to special education and boarding home care for children with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-59-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-01. Definitions. As used in this chapter:

1. ~~"Exceptional child" means a natural person who has reached the age of three years by midnight August thirty-first and has not reached the age of twenty-one years by midnight August thirty-first, who, because of mental, physical, emotional, or learning characteristics, requires special education services. This may include a handicapped child or a gifted child.~~

2. ~~"Gifted child~~ "Child who is gifted" means a gifted and talented child identified by professional, qualified persons, who, by virtue of outstanding abilities, is capable of high performance and who requires differentiated educational programs and services beyond those normally provided by the regular school program in order to realize his or her contribution to self and society.

3. ~~"Handicapped child" means a child who is mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually handicapped, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, otherwise health impaired, autistic, or traumatic brain injured who by reason thereof requires special education and related services or who has been excused from attending or participating in special education pursuant to subsection 4 of section 15-34.1-03.~~

2. "Child with disabilities" means a child who has reached the third birthday, and has not reached the age of twenty-one years by midnight of August thirty-first, who because of mental, physical, emotional, or learning characteristics requires regular or special education and related aids and services designed to meet individual education needs. This includes children who are mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually impaired, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, otherwise health impaired, autistic, or traumatic brain injured.

~~4.~~ 3. "Learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written languages, and which may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. The term "learning disability" includes, but is not limited to, such conditions as perceptual ~~handicaps~~ impairments, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but does not include learning problems due primarily to visual, hearing or motor handicaps, mental retardation, emotional disturbance, or environmental disadvantage.

~~5.~~ 4. "Special education" means classroom, home, hospital, institutional, or other instruction to meet the needs of ~~handicapped~~ children with disabilities, transportation, and corrective and supporting services required to assist ~~exceptional~~ children with disabilities in taking advantage of, or responding to, educational programs and opportunities.

SECTION 2. AMENDMENT. Section 15-59-02.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-02.1. Legislative intent - Special education. This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of ~~handicapped~~ children with disabilities in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a ~~handicapped~~ child with disabilities to benefit from special education.

The school administrator or ~~his~~ the administrator's appointed representative or director of special education other than the child's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the ~~handicapped~~ student with disabilities, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services which are provided for by limited state funds, the department of public instruction will be required to approve a contract for services based on an individualized education program developed for each ~~handicapped~~ student with disabilities placed in a private school program or in programs outside the student's original special education unit.

The legislative assembly believes that when money is distributed to a school district for special education personnel, the department of public instruction should give consideration to the units of services provided by the district, the district's special education program costs, and the district's special education program needs.

The legislative assembly recognizes that a ~~handicapped~~ student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the ~~handicapping condition~~ disability. All summer programs attended by these students must have approval of

the department of public instruction before receiving foundation aid or state special education reimbursement.

In the case of ~~handicapped~~ students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All ~~handicapped~~ children with disabilities have the right to a free appropriate education" means that all ~~handicapped~~ students with disabilities have the right to special education and related services which must be provided at no cost to parents. "At no cost" means specifically designed instruction provided without charge but does not preclude expenses normally incurred or charged to parents of ~~nonhandicapped~~ children who are nondisabled. Parents will assume such costs for a ~~handicapped~~ child with disabilities as they would if the child was ~~not handicapped~~ nondisabled. Personal items, including~~, but not limited to,~~ hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a ~~nonhandicapped~~ child who is nondisabled, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third party payments, in whatever amount is allowed, as long as there is no financial loss to the child or the child's parent, for determining a child's medically related ~~handicapping condition~~ disability or other required related services which results in the child's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a ~~handicapped~~ student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include~~, but not be limited to,~~ a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by ~~a handicapped student's~~ the parent of a child with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of ~~handicapped~~ children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the department of public instruction, the state department of

health and consolidated laboratories, and the department of human services to cooperate in planning and coordinating programs for these children.

SECTION 3. AMENDMENT. Section 15-59-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-04. School districts to provide special education. School districts shall provide special education to ~~handicapped~~ children with disabilities in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education and with the institutions of the state. Each school district shall submit a plan ~~with~~ to the superintendent of public instruction for implementing special education in the district. Special education services to ~~handicapped~~ children with disabilities three to six years of age shall be fully implemented by July 1, 1985. School districts may provide special education to ~~gifted~~ children who are gifted in accordance with the provisions of this chapter and in so doing may act jointly with one or more other districts and shall cooperate with the director of special education.

SECTION 4. AMENDMENT. Section 15-59-04.1 of the North Dakota Century Code is amended and reenacted as follows:

15-59-04.1. Records. Every school district shall make and keep a current record of all school age ~~handicapped~~ children with disabilities who are residents of the school district.

SECTION 5. AMENDMENT. Section 15-59-05 of the North Dakota Century Code is amended and reenacted as follows:

15-59-05. Powers and duties of the director of special education. The superintendent of public instruction shall establish general state policy within the provisions of this chapter and shall endeavor to ensure a cooperative special education program coordinating all available services. ~~He~~ The superintendent of public instruction shall cooperate with private agencies, soliciting their advice and cooperation in the establishment of policy and in the coordination and development of special education programs. In accordance with the provisions of this chapter, the director of special education shall prescribe rules and regulations for the special education of ~~exceptional~~ children with disabilities and for the administration of this chapter. ~~He~~ The director of special education shall assist the school districts of the state in the inauguration, administration, and development of special education programs, and ~~he shall~~ establish standards and provide for the approval of certification of schools, teachers, facilities, and equipment.

SECTION 6. AMENDMENT. Section 15-59-05.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-05.2. Interagency cooperative agreements for the provision of educational-related services to ~~handicapped~~ students with disabilities. The department of public instruction shall cooperatively develop and implement interagency agreements with appropriate public and private agencies, including the department of corrections and rehabilitation, the state department of human services, and the state department of health and consolidated laboratories, for purposes of maximizing available state resources in fulfilling the

educational-related service requirements of Public Law 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended.

SECTION 7. AMENDMENT. Section 15-59-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-06. State cooperation in special education. ~~Exceptional children~~ Children with disabilities who are enrolled in approved programs of special education must be deemed to be regularly enrolled in the school district of residence and must be included in the determination of elementary and high school per-pupil payments from the state foundation aid program whether or not such pupils are regularly attending school in the school or school district receiving such payments. A prorated state foundation aid payment for a student to attend a public school program for ~~handicapped~~ students with disabilities, approved by the superintendent of public instruction, may be made provided that the individualized education program for the child is written during the last quarter of the school term and specifically requires that the child attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who is attending a public school special education program, payments must be made to the appropriate public school district in relation to the proportion of a normal schoolday as such student participates in such special education program. For the purposes of this section, a normal schoolday must be deemed to consist of six hours. Upon the determination by the director of special education that the school district has made expenditures for each ~~exceptional~~ child with a disability or child who is gifted in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district. The amount the school district is required to expend must be reduced proportionately if a child attends the school for less than an entire year. If any school district within a special education unit has any ~~handicapped~~ elementary or high school student with disabilities who, in the opinion of a qualified psychologist, a medical doctor, district superintendent, and the district or multidistrict director of special education, is unable to attend the public schools in the special education unit because of a ~~handicapping condition~~ disability, such school district shall contract with an in-state public school outside the special education unit in which the student is a legal resident which will accept such student and has proper facilities for the education. No school district may enter into a contract with any in-state public school for the education of any student because of a ~~handicapping condition~~ disability, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract must provide that such school district agrees to pay to the in-state public school as part of the cost of educating such student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment may not exceed the actual per-pupil cost incurred by such in-state public school. The school district's liability must be reduced proportionately if the student attends the in-state public school for less than an entire year. The superintendent of public instruction, upon notification by the admitting district and upon verification by the superintendent that tuition payments are due the admitting district and are unpaid, shall withhold all payments from the state for foundation aid to the district of residence until the tuition due has been paid. The transportation must be furnished as provided by rules of the department of

public instruction. The remainder of the actual cost of educating the ~~handicapped~~ student with disabilities not covered by other payments or credits must be paid from funds provided by the legislative assembly for such purpose.

SECTION 8. AMENDMENT. Section 15-59-06.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-06.2. Cost of special education - Liability of school district. If allowable costs for special education and related services for ~~an exceptional~~ a child with disabilities in a special education program, as determined by the superintendent of public instruction, exceed the reimbursement provided by the state, the school district is liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department. The two and one-half times amount includes the amount the school district is required to pay in section 15-59-06. The state is liable for one hundred percent of the remainder of the cost of education and related services for each such ~~handicapped~~ student with disabilities.

SECTION 9. AMENDMENT. Section 15-59-07 of the North Dakota Century Code is amended and reenacted as follows:

15-59-07. Contracts for ~~handicapped~~ children with disabilities to attend private or out-of-state public schools. If any school district in this state has any ~~handicapped~~ elementary or high school student with disabilities who in the opinion of a qualified psychologist, a medical doctor, and the district superintendent is unable to attend the public schools in the district because of a physical or mental ~~handicap~~ disability or because of a learning disability, such school district shall contract with any accredited private nonsectarian nonprofit corporation within or without the state or an out-of-state public school which has proper facilities for the education of such student, if there are no public schools in the state with the necessary facilities which will accept such student. No school district shall enter into a contract with any private nonsectarian nonprofit corporation or out-of-state public school for the education of any student having a physical ~~handicap~~ or learning disability, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract ~~shall~~ must provide that such school district agrees to pay to the private nonsectarian nonprofit corporation or the out-of-state public school as part of the cost of educating such student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment ~~shall~~ may not exceed the actual per-pupil cost incurred by such private nonsectarian nonprofit corporation or out-of-state public school. The transportation ~~shall~~ must be furnished and reimbursed as provided by rules ~~and regulations~~ of the department of public instruction. The rules ~~and regulations~~ of the department of public instruction ~~shall~~ have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident ~~shall~~ must be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the individualized education program at a rate not to exceed that paid state officials. The remainder of the actual cost of educating the ~~handicapped~~ student with disabilities not covered by other payments or credits ~~shall~~ must be paid from funds appropriated by the legislative assembly for special

education notwithstanding limitations cited in section 15-59-06. The district of residence ~~shall be~~ is entitled to the per-pupil foundation payment. The reimbursement herein provided to the contracting district from the state special education funds ~~shall be~~ is in lieu of any other foundation aid to which the district might otherwise be entitled.

SECTION 10. AMENDMENT. Section 15-59-07.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-07.2. Reimbursement by the superintendent of public instruction for special education boarding care costs. The superintendent of public instruction, within the limits of legislative appropriations, shall reimburse local school districts for eighty percent of the costs of room and board paid on behalf of ~~handicapped~~ children with disabilities placed in facilities outside their school district of residence for special education services not available within their school district of residence. Reimbursements ~~shall~~ must be made regardless of whether the child has been placed in a facility within the state or outside the state. Any special education room and board costs in excess of those payments made by the superintendent of public instruction are the responsibility of the local school district. The placement of ~~handicapped~~ children with disabilities in public or private facilities will be made by school districts. Placement in congregate care will be made in facilities designated by the department of human services.

SECTION 11. AMENDMENT. Section 15-59-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-10. Enforcement of right to education - Attorneys' fees. Each parent or guardian of a ~~handicapped~~ child with disabilities as defined in subsection 3 of section 15-59-01, or ~~a handicapped~~ an adult with disabilities between the ages of eighteen and twenty-one is entitled to enforce ~~that handicapped child's or handicapped adult's~~ the right of that child or adult with disabilities to an education guaranteed by state and federal law, through an administrative proceeding, civil action, or other remedy available by common law or statute. The parent or guardian of a child with disabilities or the adult with disabilities is encouraged to submit a written request to the appropriate school administrator or director of special education regarding the relief sought prior to a proceeding. In any administrative or judicial proceeding to enforce that right, the court may, in its discretion, award reasonable attorneys' fees and costs to a parent, guardian, or ~~handicapped~~ adult with disabilities who prevails in that proceeding. ~~However, no attorney's fees or costs may be awarded for services rendered or costs incurred before the time when the parent, guardian, or handicapped adult submitted a written request to the appropriate school administrator or director of special education, for the relief sought and obtained in that proceeding.~~

SECTION 12. AMENDMENT. Section 15-59.3-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59.3-01. Definitions. As used in this chapter:

1. "Boarding home care for ~~special education~~ students with disabilities" means the provision of boarding home care for ~~those students~~ a student who is a child with disabilities as described in subsection ~~1~~ 2 of section 15-59-01 and includes the provision of food, shelter, security, and safety, on a twenty-four-hour basis to one or more students.

2. "Department" means the department of human services.

3. "Family boarding home" means an occupied private residence at which boarding home care for ~~special education~~ students with disabilities is regularly provided by the owner or lessee thereof to no more than four children, unless all students provided boarding home care are related to each other by blood or marriage, in which case this limitation ~~shall~~ does not apply.

4. "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this chapter.

5. "Registration" means the process whereby the department maintains a record of all family boarding homes, prescribes standards and adopts rules under section 15-59.3-06, and requires the operator of such home to certify that the operator has complied with the prescribed standards and adopted rules.

6. "Registration certificate" is a written instrument issued by the department to publicly document that the certificate holder is in compliance with this chapter and the applicable rules and standards prescribed by the department.

7. "Relative" means any person having the following relationship to the student by marriage, blood, or adoption: grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt.

SECTION 13. AMENDMENT. Section 15-59.3-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **15-59.3-02. Boarding home care for ~~special education~~ students** with disabilities **- Registration required.** No person, partnership, voluntary organization, or corporation may establish or operate a family boarding home without first obtaining a registration certificate. The mandatory provisions of this section requiring registration do not apply when the boarding home care is provided in:

1. The home of a relative.

2. A home or institution under the management and control of the state or the public school board.

3. A home furnishing "foster care for children" as defined in subsection 1 of section 50-11-00.1.

SECTION 14. AMENDMENT. Section 15-59.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59.3-03. Public agency purchase of boarding home care for ~~special education~~ students with disabilities. No agency of state or local government may purchase or provide boarding home care for ~~special education~~ students with disabilities unless the family boarding home:

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[1] NOTE: Section 15-59.3-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

1. Has obtained a registration certificate; or

2. If exempted from registration by subsection 1 or 2 of section 15-59.3-02, complies with all applicable standards and rules issued or adopted by the department.

SECTION 15. AMENDMENT. Section 15-59.3-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59.3-04. Registration certificate granted. Applications for a registration certificate for the operation of a home receiving ~~special education~~ students with disabilities for boarding home care must be made on the forms provided, and in the manner prescribed, by the department. The department may investigate the applicant's activities and make an inspection of the proposed home. A registration certificate for the operation of the home must be granted by the department within ten working days of receipt of the proper forms upon a determination that:

1. The premises to be used are in sanitary condition and properly equipped to provide for the health and safety of all students who may be received;

2. The persons in charge of such home and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and the rules and standards prescribed by the department; and

3. The home will be maintained according to the standards prescribed for its conduct by the rules of the department. The registration certificate ~~shall be in effect~~ is effective for a period of not more than two years.

SECTION 16. AMENDMENT. Section 15-59.3-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59.3-05. Conviction not bar to registration - Exceptions. Conviction of an offense does not disqualify a person from registration under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of a boarding home for ~~special education~~ students with disabilities, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 17. AMENDMENT. Section 15-59.3-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59.3-06. Minimum standards - Rules - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of boarding homes and the registration of such homes. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.

2. Take such action and make such reasonable rules for the regulation of boarding home care for ~~special education~~ students with disabilities as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.

3. Authorize a governmental unit to:

a. Inspect any home for which a registration certificate is applied for or issued under this chapter; and

b. Certify to the department that the home meets the requirements of this chapter and the minimum standards prescribed by the department.

SECTION 18. AMENDMENT. Section 15-59.3-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59.3-07. Investigation of applicants and registrants - Maintenance of records - Confidentiality of records.

1. The department and its authorized agents at any time may investigate and inspect the conditions of the home and the qualifications of the owner or operator ~~thereof~~. Upon request of the department, the state department of health and consolidated laboratories or the state fire marshal, or ~~his~~ a designee, shall inspect any home for which a registration certificate is applied for or issued and shall report its findings to the department.

2. All holders of registration certificates shall:

   a. Maintain such records as the department may prescribe regarding each student in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the students upon forms furnished by the department; and

   b. Admit for inspection authorized agents of the department and open for examination all records, books, and reports of the home.

3. All records and information maintained with respect to students receiving home care for ~~special education~~ students with disabilities are confidential, must be properly safeguarded, and must not be disclosed except:

   a. In a judicial proceeding;

   b. To officers of the law or other legally constituted departments or agencies; or

   c. To parents and persons having a definite interest in the well-being of the student or students concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 206

SENATE BILL NO. 2388
(Senator Holmberg)
(Representative Poolman)

SCHOLARS PROGRAM REAPPLICATION

AN ACT to amend and reenact section 15-62.2-03.2 of the North Dakota Century Code, relating to eligibility to reapply for scholarships under the student financial assistance and scholars program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.2-03.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.2-03.2. Reapplication eligibility - Amount of scholarships - Duration. Scholars are eligible to reapply for scholarships for subsequent academic years provided they maintain a 3.6 grade point average based upon a 4.0 grading system. Scholars entering the scholars program during or after the 1994 fall semester are eligible to reapply for scholarships for subsequent academic years provided they maintain a 3.50 grade point average. The amount of the scholarship must equal the tuition charged at the scholar's eligible institution but may not exceed the amount charged for tuition at the state universities. A state scholar may receive a scholarship for not more than eight semesters or twelve quarters of undergraduate study, or until the attainment of the student's baccalaureate degree, whichever comes first.

Approved March 22, 1993
Filed March 23, 1993

ELECTIONS

CHAPTER 207

SENATE BILL NO. 2460
(Senators Jerome, Evanson)

ELECTOR QUALIFICATIONS

AN ACT to amend and reenact section 16.1-01-04 of the North Dakota Century Code, relating to the qualifications of electors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.

2. Every qualified elector of the state may have only one voting residence.

3. A person's voting residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.

4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by persons convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.

~~5. Pursuant to section 2 of article II of the Constitution of North Dakota, no person who is under guardianship, non compos mentis, or insane is qualified to vote at any election. To be denied the right to vote under this subsection, a person must have a guardian duly appointed by a court of competent jurisdiction, upon a finding of incompetence or incapacitation due to mental illness or defect.~~

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 208

SENATE BILL NO. 2327
(Senators Urlacher, Tomac)
(Representatives Jacobs, Wald)

STATEWIDE SPECIAL ELECTION COSTS

AN ACT to create and enact a new section to chapter 16.1-01 of the North Dakota Century Code, relating to reimbursement of county expenses for statewide special elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Special election costs - Reimbursement. The state shall reimburse each county for the costs incurred by the county for conducting a statewide special election that is not held on the date of a statewide primary or general election. Each county shall submit a detailed statement to the office of the budget which lists all expenses incurred by the county in conducting the special election within forty-five days after the special election. The office of the budget shall submit a request for an appropriation to reimburse the counties to the next regular or special session of the legislative assembly. The legislative assembly shall appropriate the funds necessary for the payment of the special election costs.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 209

HOUSE BILL NO. 1301
(Representatives A. Olson, D. Olsen)
(Senator Krebsbach)

POLITICAL PARTY STATE COMMITTEE MEMBERS

AN ACT to amend and reenact section 16.1-03-08 of the North Dakota Century Code, relating to the membership of the state committee of a political party.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-08. State committee - Membership. The state committee of each party consists of the chairman of each of the district committees of the party, the national committeeman and national committeewoman of the party, and any person provided for in the bylaws of the state committee.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 210

HOUSE BILL NO. 1457
(Representatives Gorder, Kilichowski, Monson, A. Olson)
(Senators Sand, Tallackson)

VOTE CANVASSING AND COUNTING MACHINES

AN ACT to amend and reenact sections 16.1-06-10.1 and 16.1-15-02.1 of the North Dakota Century Code, relating to canvassing of votes and sharing of electronic counting machines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-06-10.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-10.1. Electronic counting machines authorized - Sharing of machines. The use of electronic counting machines is ~~hereby~~ authorized in any election precinct upon finding and declaration by resolution of the city or township governing body, and also of the board of county commissioners of the county in which ~~such~~ the election precinct is located, that ~~such~~ the use is advisable or necessary in that precinct. Thereafter, the machines must be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city or township and county, agreed upon by the respective governing bodies. ~~The machines may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part~~ Two or more counties may enter an agreement concerning the shared use and transport between counties of electronic counting machines and apportioning of expenses. Any electronic counting machine used in an election must be so constructed that when properly operated it registers or records correctly and accurately every vote cast.

SECTION 2. AMENDMENT. Section 16.1-15-02.1 of the North Dakota Century Code is amended and reenacted as follows:

[1] **16.1-15-02.1. Alternative method for canvassing election for counties using** or sharing **electronic voting systems or electronic counting machines - County canvassing board.** At the option of the county auditor in any county using or sharing with another county electronic voting systems or electronic counting machines, the county canvassing board, in lieu of the election boards, shall canvass the votes for those precincts using either device. The county auditor shall designate the public place where the ballots from all precincts in the county must be delivered by the election inspector and an election judge from each political party represented on the election board. If the public place is other than the location of the canvass the county auditor and a representative of each political party represented on the election boards shall arrange for the removal of the

[1] NOTE: Section 16.1-15-02.1 was also amended by section 19 of Senate Bill No. 2361, chapter 201.

ballots from the public place to the location of the canvass and shall provide notice of the time and location of the canvass on the main entrance of each polling place. The board shall canvass the votes in the same manner as required for the election boards insofar as those provisions ~~of law~~ are applicable. The auditor shall notify the county canvassing board of this duty not less than one week ~~prior to~~ before the election. This procedure is in addition to the canvass of returns that the county canvassing board must perform as provided in this chapter.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 211

SENATE BILL NO. 2443
(Senator Nelson)

POLITICAL COMMITTEE ANNUAL REGISTRATION

AN ACT to amend and reenact subsection 3 of section 16.1-08-02 of the North Dakota Century Code, relating to political committee registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 3 of section 16.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

3. A political committee formed to aid or oppose a political party, committee, organization, association, a candidate for political office or nomination to political office, or a measure to be voted upon by the voters of the state shall register its name, address, and its agent's name and address with the secretary of state each year in which it distributes any contribution. The registration must be completed before the distribution of any contribution and must be submitted with a registration fee of five dollars.

Approved March 16, 1993
Filed March 16, 1993

[1] NOTE: Section 16.1-08-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54, and by section 1 of Senate Bill No. 2470, chapter 212.

CHAPTER 212

SENATE BILL NO. 2470
(Senator Nelson)

CAMPAIGN CONTRIBUTION STATEMENTS

AN ACT to amend and reenact subsection 4 of section 16.1-08-02, sections 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, and 16.1-08.1-04 of the North Dakota Century Code, relating to campaign contribution statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 4 of section 16.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

4. All political committees formed for the purpose of administering the segregated fund provided for in this section shall file a statement ~~listing all contributions received in excess of two hundred dollars in the aggregate from each contributor for the twelve-month period beginning with the first day of October and ending with the thirtieth day of September of the following year,~~ showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for ~~each such twelve-month~~ the reporting period, and a listing of all disbursements of an amount in excess of one hundred dollars in the aggregate made for political purposes~~, no later than October fifteenth following each such twelve-month period~~ with the secretary of state. ~~Within thirty days of the close of the calendar year all political committees shall file a supplemental statement in the same form for the last three months of the calendar year.~~ A yearend statement covering the entire calendar year must be filed no later than five p.m. on the thirty-first day of the following year. A preelection statement must be filed no later than five p.m. on the twelfth day before any primary or general election and must be complete for the calendar year through the twentieth day before the election.

   a. The form of all statements required by this chapter must be as prescribed by the secretary of state.

   b. The secretary of state may arrange an audit of any statement filed under this chapter. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit must be reported to the attorney general.

   c. Records and statements must be preserved by the secretary of state for a period of four years from the date of filing. The records and statements are public records and must be open to public inspection.

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[1] NOTE: Section 16.1-08-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54, and by section 1 of Senate Bill No. 2443, chapter 211.

SECTION 2. AMENDMENT. Section 16.1-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02. Statement required of candidates - Contents - Additional statements. Any candidate for a public office ~~at any general, primary, or special election,~~ or any candidate who sought a public office or is seeking a public office and who is soliciting or accepting contributions for any political purpose, shall make and file a statement in accordance with this section. The statement must contain a detailed statement of all contributions received from each individual or political committee which exceed one hundred dollars ~~in the aggregate for the calendar year~~.

The statement must include the name and mailing address of all contributors listed. ~~All statements filed pursuant to this section must be consecutive and, taken together, must cover the entire calendar year's receipts up through the cutoff date for each statement.~~ In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this chapter.

The statement required of a candidate must be filed with the secretary of state no later than ~~four~~ five p.m. on the ~~tenth~~ twelfth day prior to the date of the ~~general, primary, or special~~ election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year through the ~~fifteenth~~ twentieth day prior to the date of the ~~general, primary, or special~~ election. A complete statement for the entire calendar year must be filed no later than ~~four~~ five p.m. on the ~~thirtieth~~ thirty-first day of January of the following ~~calendar~~ year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than ~~four~~ five p.m. on the next business day on which the office of the secretary of state is open.

The form of all statements required by this chapter must be as prescribed by the secretary of state. Statements of a legislative candidate must be filed in the office of the county auditor of the candidate's county of residence under the same limitations as apply to the filing of statements with the secretary of state. Statements of state office candidates and any other required statements must be filed in the office of the secretary of state.

No candidate may be required to file any statement required by this chapter if the candidate has not received any contributions in excess of one hundred dollars during the calendar year.

SECTION 3. AMENDMENT. Section 16.1-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03. Contributions statement required of political parties. Any political party ~~which~~ that receives contributions in excess of one hundred dollars and ~~which~~ contributes money to a candidate in excess of one hundred dollars shall~~, within fifteen days of the close of the calendar year,~~ do one of the following:

1. File a statement listing the total amount contributed to or expended on behalf of a candidate or candidates.

2. File a statement containing a detailed list of all contributions received from an individual or political committee which exceed one hundred dollars in amount. The statement must include the name and mailing address of all contributors listed.

~~Any such~~ A yearend statement covering the entire calendar year must be filed with the secretary of state no later than ~~four~~ five p.m. on the ~~thirtieth~~ thirty-first day of January of the following ~~the close of the calendar~~ year ~~which is the subject of the statement~~. A preelection statement must be filed no later than five p.m. on the twelfth day before any election and must be complete for the calendar year through the twentieth day before the election. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the statement must be filed on the next available day on which the office of the secretary of state is open.

SECTION 4. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Statement required of persons promoting passage or defeat of initiated or referred measure - Contents. Any person who is soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of any statewide initiated or referred measure at any ~~primary, general, or special~~ election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars ~~in the aggregate during the calendar year. The statement must contain a detailed statement of all contributions received from each person which exceed one hundred dollars in the aggregate for the calendar year~~.

The statement must include the name and mailing address of all contributors listed. ~~All statements filed pursuant to this section must be consecutive and, taken together, must cover the entire calendar year's receipts up through the cutoff date for each statement.~~ In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this section.

The statement required of a person must be filed with the secretary of state no later than ~~four~~ five p.m. on the ~~tenth~~ twelfth day prior to the date of the ~~general, primary, or special~~ election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the ~~fifteenth~~ twentieth day prior to the date of the ~~general, primary, or special~~ election. A complete statement for the entire calendar year must be filed no later than ~~four~~ five p.m. on the ~~thirtieth~~ thirty-first day of January of the following ~~calendar~~ year. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than ~~four~~ five p.m. on the next business day on which the office of the secretary of state is open.

The secretary of state shall prescribe the form of all statements required by this section.

SECTION 5. AMENDMENT. Section 16.1-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04. Supplemental statement required on large contributions received after original statement - Filing time. If any candidate or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure receives any contribution of five hundred dollars or more in the ~~fifteen-day~~ twenty-day period prior to any ~~general, primary, or special~~ election from any individual contributor, that candidate or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02 or 16.1-08.1-03.1, stating the name and street address of such contributor and the amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 213

HOUSE BILL NO. 1051
(Legislative Council)
(Interim Legislative Redistricting and Elections Committee)

NOMINATION PETITION SIGNATURES

AN ACT to amend and reenact sections 16.1-11-11 and 16.1-12-02 of the North Dakota Century Code, relating to signature requirements for nomination petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-11. County and legislative district candidates' petitions - Filing - Contents. Every candidate for a county or legislative district office shall present, not more than seventy nor less than sixty days and before four p.m. of the sixtieth day ~~prior to~~ before any primary election, ~~present~~ to the county auditor of the county in which ~~he~~ the candidate resides either:

1. A certificate of endorsement signed by the district chairman of any legally recognized political party containing the candidate's name, post-office address, the title of the office to which ~~he~~ the candidate aspires, and the party ~~which he~~ that the candidate represents; or

2. A petition containing the following:

   a. The candidate's name, post-office address, and the title of the office to which ~~he~~ the candidate aspires.

   b. The name of the party the candidate represents, only if it is a petition for an office ~~which~~ that is under party designation.

   c. The signatures of qualified electors, the number of which must be determined as follows:

      (1) If the office is ~~under no party designation~~ a county office, the signatures of not less than two percent and not more than five percent of the total vote cast for the office at the most recent general election at which the office was voted upon.

      (2) If the office is ~~under no party designation~~ a county office and multiple candidates were elected to the office at the preceding general election at which the office was voted upon, the signatures of not less than two percent and not more than five percent of the votes cast for all candidates divided by the number of candidates that were to be elected to that office.

      (3) ~~If the office is under a party designation, the signatures of the same percentage as provided in paragraph 1 of the total vote cast for the candidate of the party represented for the same~~

~~position at the most recent general election at which the office was voted upon.~~

~~(4) If there were more than one party candidate, the signatures of the same percentage as provided in paragraph 1 of the total number of votes for all party candidates divided by the number of party candidates.~~

~~(5)~~ If the office is a county office and no candidate was elected or no votes were cast for ~~an~~ the office at any general election, the number of signers equal to the percentage as provided in paragraph 1 applied to the total average vote cast for the offices of sheriff and county auditor at the most recent general election at which those officers were elected in the petitioner's county ~~or district~~. This average must be determined by dividing by two the total vote cast for those offices.

(4) If the office is a legislative office, the signatures of at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census.

~~(6)~~ (5) In no case may more than three hundred signatures be required.

d. The mailing address and date of signing for each signer.

If the petition or certificate of endorsement is mailed, it must be in the possession of the county auditor before four p.m. on the sixtieth day ~~prior to~~ before the primary election.

SECTION 2. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The names of nominees so nominated must appear on the ballot as independent nominations. Each certificate of nomination by petition must contain:

1. The name of the nominee.
2. The office the nominee desires to fill.
3. The post-office address of the nominee.
4. Signatures of qualified electors who reside in the state, district, or political subdivision. The signatures need not be appended to one paper, and each person signing shall add ~~his~~ that person's mailing address and the date of signing. The signatures on the petition must be in the following number:
   a. Except as provided in subdivision c, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.

b. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be ~~ten~~ at least two percent of the ~~number of votes cast in the district for governor at the last preceding general election~~ resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.

c. If the nomination is for the office of president, there must be no fewer than four thousand signatures.

5. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 214

HOUSE BILL NO. 1253
(Representatives Kretschmar, Allmaras, Brown)
(Senators Holmberg, Dotzenrod, O'Connell)

COUNTY MAIL BALLOT PRIMARY ELECTIONS

AN ACT to authorize counties to conduct mail ballot primary elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Counties may conduct mail ballot elections - Polling places - Records. The board of county commissioners of a county may conduct a primary election by mail ballot. The mail ballot election must include city elections administered by the county auditor, and may include any other election administered by the county auditor pursuant to an agreement with the governing body of a political subdivision within the county. The board shall designate at least one polling place in the county to be open on the day of the election for voting in the usual manner. The county auditor shall place a notice at all polling places in the county used at the last statewide election which states the location of the polling places open for the primary election. The county auditor shall keep a record of each mail ballot provided to qualified electors and provide to the election board at each polling place open on the day of the election a list of every person who applied for a mail ballot.

SECTION 2. Application for mail ballots. The county auditor shall mail an application form for a mail ballot to each person listed in the pollbooks of the county from the last regular statewide election on one date no sooner than the forty-fifth day before the election and no later than the thirtieth day before the election. The county auditor, for two consecutive weeks after the date on which the mail ballot applications are mailed, shall publish in the official newspaper of the county an application form for a mail ballot and a notice that additional mail ballot applications may be obtained from the election official. The application form for a mail ballot must be in substantially the following form:

I, _____, am or will be a duly qualified elector and to my
(please print name)
best knowledge and belief and am or will be entitled to vote at the primary election. I hereby apply for an official mail ballot to be voted by me at that election. I understand that it is a criminal offense to knowingly vote when not qualified to do so.

I have or will have resided at the below address for at least thirty days before the election. My phone number is _____.

Dated this _____ day of _____, 19__.

_____
(Signature of Applicant)

_____
(Mailing Address)
_____, North Dakota_____
(City) (Zip Code)

SECTION 3. Mail ballot distribution. The county auditor shall mail an official mail ballot with a return identification envelope and instructions sufficient to describe the voting process to each qualified elector who returns a properly completed application form to the auditor by five p.m. on the fourth day before the election. The voting instructions must contain a statement informing the elector that the elector is entitled to complete the mail ballot in secrecy. The auditor shall mail the ballot by first-class mail, addressed to the address of the elector completing and returning a mail ballot application, and placed in an envelope that is prominently marked "Do Not Forward". The return identification envelope must contain the following form:

I, _____, under penalty of possible criminal
(please print name)

prosecution for making a false statement, certifiy that I am or will be a qualified elector for the primary election and have not and will not vote more than one ballot in this election. I also understand that failure to complete the information below will invalidate my ballot.

_____
(Signature of Voter)

_____
(Mailing Address)
_____, North Dakota_____
(City) (Zip Code)

SECTION 4. Voting by electors. Upon receipt of a mail ballot, an elector shall mark it, sign the return identification envelope, and comply with the instructions provided with the ballot. The elector may return the completed ballot to the county auditor by mail or, before six p.m. on the day of the election, to any other place of deposit designated by the auditor. If the elector returns the ballot by mail, the elector shall provide the postage, and the ballot must be postmarked no later than the day before the election.

SECTION 5. Replacement ballots. An elector may obtain a replacement ballot if a mail ballot is destroyed, spoiled, lost, or not recceived by the elector. The elector seeking a replacement ballot shall sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received and shall present the statement to the county auditor no later than four p.m. on the day before the election.

SECTION 6. Canvass of votes - Special election board. The county auditor shall appoint a special election board for the purpose of counting mail ballots. The board may not begin counting the ballots until six p.m. on the day of the election. A county conducting a mail ballot election constitutes one voting area, and ballots need not be sorted according to precinct or ward unless necessary for the administration of the election.

SECTION 7. Counting of mail ballots. A mail ballot may be counted only if:

1. The ballot is returned in the return identification envelope;

2. The envelope is signed by the elector to whom the ballot is issued; and

3. The signature has been verified by the election board with the signature on the elector's mail ballot application form.

SECTION 8. Election laws applicable. When applicable, all election procedures provided in title 16.1 must be followed.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 215

SENATE BILL NO. 2333
(Senators Holmberg, DeMers, Grindberg)

PRESIDENTIAL WRITE-IN VOTE COUNTING

AN ACT to amend and reenact section 16.1-12-02.2 of the North Dakota Century Code, relating to the counting of ballots and certificates of candidacy by write-in candidates for president of the United States.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02.2. Counting of write-in votes - **Certificate of candidacy by write-in candidates for ~~presidential electors~~** president of the United States.

1. An election board or canvassing board is not required to count any write-in vote for any:

   a. Person who is required to file a certificate of write-in candidacy under this section but who has not filed a certificate of candidacy and been certified as a write-in candidate.

   b. Fictitious person, nonperson, or person clearly not eligible to qualify for the office for which the vote was cast.

   c. Statement concerning the candidates.

2. A person who intends to be a write-in candidate for president of the United States at the presidential preference primary election shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the primary election. The certificate must contain the name and address of the candidate and be signed by the candidate. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates to each county auditor as write-in candidates.

3. A person who intends to be a write-in candidate at the general election for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state

shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 216

HOUSE BILL NO. 1247
(Representatives Kretschmar, Maragos)

UNITED STATES SENATOR VACANCY

AN ACT to amend and reenact section 16.1-13-08 of the North Dakota Century Code, relating to filling a vacancy in the office of United States senator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-13-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-08. Filling vacancy in office of United States senator. When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election ~~as follows:~~

~~1. If the vacancy occurs during a calendar year in which there is a regularly scheduled statewide election and at least ninety days prior to the general election in that year, the vacancy must be filled at the next statewide election; however, if there is not at least a ninety-day period between the date of the vacancy and the date of the next statewide election, the vacancy must be filled at the general election.~~

~~2. If the vacancy occurs during a calendar year in which there is not a statewide election regularly scheduled or during a calendar year in which such an election is scheduled but less than ninety days prior to the general election, the governor shall issue a writ of election which must designate a time for holding a special election to fill the vacancy, which election must be held within ninety days of the occurrence of the vacancy~~ or until the term expires if no election can be held.

Approved April 9, 1993
Filed April 9, 1993

FIRES

CHAPTER 217

HOUSE BILL NO. 1036
(Legislative Council)
(Interim Finance and Taxation Committee)

FIRE PROTECTION DISTRICT FUNDING

AN ACT to amend and reenact section 18-04-05 and subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to allocation of insurance premium tax revenues to fire protection districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-05 of the North Dakota Century Code is amended and reenacted as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Certificate of commissioner of insurance to office of management and budget. The commissioner of insurance shall compute the amounts due to the ~~several~~ cities, townships, certified rural fire departments, or fire protection districts entitled to benefits under this chapter~~, and shall certify such amounts for payment to the office of management and budget~~ on or before September first of each year, in the following manner:

1. To ~~cities~~ a city not within ~~the boundaries of~~ a fire protection district, a sum equal to ~~two and one-fourth~~ eighty-four percent of the tax collected on premiums received by insurance companies pursuant to section 26.1-03-17 issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property in ~~such cities~~ the city.

2. ~~To each city fire department performing service outside of its incorporated limits, the sum of one hundred dollars.~~

3. ~~To each rural fire department not certified by the state fire marshal, the sum of two hundred dollars per year.~~

4. To each rural fire protection district organized ~~within the provisions of~~ under this title or rural fire department certified by the state fire marshal, ~~two hundred dollars plus~~ a sum equal to ~~two and one-fourth~~ eighty-four percent of the tax collected on premiums received by insurance companies pursuant to section 26.1-03-17 issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property within the ~~boundaries of such~~ rural fire protection ~~districts~~ district or property served by the certified rural fire ~~departments~~ department.

~~The amount distributed by the commissioner of insurance pursuant to this section may not exceed the amount of the biennial appropriation made by the legislative assembly.~~ Payments by the commissioner of insurance must be distributed in September of each year ~~beginning in September 1990~~. If the appropriation is less

than the amount determined by applying the formula pursuant to this section, the commissioner of insurance by proration shall provide each eligible recipient the same proportion of the appropriation as the percent of the total funds it would have received pursuant to such formula.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable ~~and~~. Eighty-four percent of the revenue from the tax imposed upon policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance must be deposited in the insurance tax distribution fund under section 18-04-04.1 ~~but not in an amount exceeding two million six hundred thousand dollars in any fiscal year, and any amounts exceeding that amount~~ and the remaining sixteen percent as well as revenue from the tax imposed upon policies for any other line of insurance must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

Approved March 16, 1993
Filed March 16, 1993

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 218

SENATE BILL NO. 2161
(Human Services Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

HEALTH DEPARTMENT DIVISIONS AND ABOVEGROUND STORAGE TANKS

AN ACT to create and enact six new subsections to section 23-01-05 and a new section to chapter 23-13 of the North Dakota Century Code, relating to the duties of the state health officer and storage of petroleum products in aboveground storage tanks; to amend and reenact section 19-01-13, subsection 1 of section 19-03.1-01.1, subsections 4 and 5 of section 19-03.1-37, subsection 1 of section 19-13.1-12, subsection 2 of section 19-20.1-17, section 23-01-01, and subsection 1 of section 43-43-01 of the North Dakota Century Code, relating to the powers and duties of the state department of health and consolidated laboratories; and to repeal sections 19-01-02, 19-10-22.1, 23-01-07, and 23-01-09 of the North Dakota Century Code, relating to the organizational structure and duties of the state department of health and consolidated laboratories.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-13 of the North Dakota Century Code is amended and reenacted as follows:

19-01-13. Department may seize unlawful products, articles, compositions, or things without search warrant. The department may seize any product, article, composition, or thing which is manufactured, sold, used, transported, kept, or offered for sale, use, or transportation, or which is held in possession with intent to use, sell, or transport the same, in violation of any provision of this title applicable to such product, article, composition, or thing, or in violation of any rule, regulation, standard, or definition relating to the product, article, composition, or thing established pursuant to any provision of this title. The ~~director, assistant director, inspector, agents, or~~ employees of the department~~,~~ have the powers of a peace officer. A seizure may be made without warrant, but, as soon as practicable, the person suspected of violation must be arrested and prosecuted for the violation.

[1] **SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the ~~consolidated laboratories branch~~ forensic sciences division of the department of health and consolidated laboratories or the

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[1] NOTE: Subsection 1 of section 19-03.1-01.1 was also amended by section 1 of Senate Bill No. 2093, chapter 220.

director's designee, the chairperson of the state board of medical examiners or the chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, must be the chairperson of the board.

[2] **SECTION 3. AMENDMENT.** Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the department of health and consolidated laboratories, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

5. Notwithstanding any statute or rule to the contrary, the defendant may subpoena the state toxicologist or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the department of health and consolidated laboratories or any employee of either to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

SECTION 4. AMENDMENT. Subsection 1 of section 19-13.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department from performing its duties in connection with the provisions of this chapter, shall be guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the director of the ~~consolidated laboratories branch~~ chemistry division of the department of health and consolidated laboratories, or the director's authorized agent, shall be accepted as prima facie evidence of the composition.

SECTION 5. AMENDMENT. Subsection 2 of section 19-20.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person convicted of violating this chapter or the rules adopted under this chapter or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department in the performance of its duty in connection with this chapter or the rules adopted under this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of fertilizers, soil amendments, or plant amendments, a certified copy of the official analysis signed by the director of the ~~consolidated laboratories branch~~ chemistry division of

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[2] NOTE: Section 19-03.1-37 was also amended by section 5 of Senate Bill No. 2093, chapter 220, and by section 1 of Senate Bill No. 2336, chapter 222.

the department or the director's assigned agent must be accepted as prima facie evidence of the composition.

SECTION 6. AMENDMENT. Section 23-01-01 of the North Dakota Century Code is amended and reenacted as follows:

23-01-01. State department of health and consolidated laboratories - Officers. The state department of health and consolidated laboratories consists of a health council, a state health officer, ~~a laboratories branch director,~~ section chiefs, directors of divisions, and other employees of the department.

SECTION 7. Six new subsections to section 23-01-05 of the North Dakota Century Code are created and enacted as follows:

Make bacteriological examination of bodily secretions and excretions and of waters and foods.

Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.

Make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.

Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.

From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.

Establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. No charge may be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.

SECTION 8. A new section to chapter 23-13 of the North Dakota Century Code is created and enacted as follows:

Aboveground storage tanks permitted - Limitations. Subject to local zoning ordinances, a business selling petroleum products at retail may utilize aboveground

tanks with a maximum capacity not exceeding nineteen thousand gallons [71922.6 liters] for the storage of petroleum products. No business selling petroleum products at retail may use more than five aboveground storage tanks at one location.

SECTION 9. AMENDMENT. Subsection 1 of section 43-43-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Advisory board" means the following or their appointed agents: state health officer as chairperson, ~~the director of the consolidated laboratories branch of the department of health and consolidated laboratories,~~ the commissioner of the North Dakota department of agriculture, and the president of the North Dakota environmental health association. The state health officer shall appoint one agent of a district or local health unit environmental health practitioner and one consumer.

SECTION 10. REPEAL. Sections 19-01-02, 19-10-22.1, 23-01-07, and 23-01-09 of the North Dakota Century Code are repealed.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 219

HOUSE BILL NO. 1401
(Representatives Rennerfeldt, Svedjan, Porter, Kerzman)
(Senators Kinnoin, Traynor)

GENERIC DRUG PRESCRIPTION

AN ACT to amend and reenact subsection 4 of section 19-02.1-14.1 of the North Dakota Century Code, relating to the prescription of generic name drug products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 19-02.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

4. In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the federal Social Security Act, the following also apply:

   a. If the practitioner has instructed the pharmacist to dispense as written, the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting. The pharmacist may dispense a therapeutically equivalent generic name drug product if this handwritten instruction does not appear on the prescription.

   b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. The prescription must then be signed by the practitioner and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.

   c. If the practitioner has not instructed the pharmacist to dispense a brand name drug or medicine and the patient specifically requests a brand name drug or medicine, the patient shall pay the difference between the price to the patient of the brand name drug or medicine and the therapeutically equivalent generic name drug or medicine if the price of the brand name drug or medicine is higher.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 220

SENATE BILL NO. 2093
(Judiciary Committee)
(At the request of the North Dakota Controlled Substances Board)

CONTROLLED SUBSTANCES

AN ACT to create and enact a new subdivision to subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances; and to amend and reenact subsection 1 of section 19-03.1-01.1, subsections 5 and 7 of section 19-03.1-05, subsection 5 of section 19-03.1-13, and subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code, relating to controlled substances and controlled substances board membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 1 of section 19-03.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby established a North Dakota controlled substances board consisting of the attorney general or the attorney general's designee, the director of the ~~consolidated laboratories branch~~ forensic sciences division of the state department of health and consolidated laboratories or the director's designee, the chairperson of the state board of medical examiners or the chairperson's designee, a member appointed by the governor, and the executive secretary of the state board of pharmacy or the executive secretary's designee. The executive secretary of the state board of pharmacy, or the executive secretary's designee, must be the chairperson of the board.

SECTION 2. AMENDMENT. Subsections 5 and 7 of section 19-03.1-05 of the North Dakota Century Code are amended and reenacted as follows:

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

   a. Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers (also known as etryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) Indole).

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[1] NOTE: Subsection 1 of section 19-03.1-01.1 was also amended by section 2 of Senate Bill No. 2161, chapter 218.

b. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).

~~b.~~ c. 2, 5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).

d. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).

~~c.~~ e. 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).

~~d.~~ f. 5-methoxy-3,4-methylenedioxy-amphetamine.

~~e.~~ g. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM" and "STP").

~~f.~~ h. 3,4-methylenedioxy amphetamine.

~~g.~~ i. 3,4-methylenedioxymethamphetamine (also known as MDMA).

~~h.~~ j. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA.

~~i.~~ k. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA.

~~j.~~ l. 3,4,5-trimethoxy amphetamine.

~~k.~~ m. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).

~~l.~~ n. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).

~~m.~~ o. Dimethyltryptamine (also known as DMT).

~~n.~~ p. Hashish.

~~o.~~ q. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).

~~p.~~ r. Lysergic acid diethylamide.

~~q.~~ s. Marijuana.

~~r.~~ t. Mescaline.

~~s.~~ u. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).

~~t.~~ v. Peyote (all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound,

manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts).

~~u.~~ w. N-ethyl-3-piperidyl benzilate.

~~v.~~ x. N-methyl-3-piperidyl benzilate.

~~w.~~ y. Psilocybin.

~~x.~~ z. Psilocyn.

~~y.~~ aa. Tetrahydrocannabinols (synthetic) equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

~~z.~~ bb. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)

~~aa.~~ cc. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.)

~~bb.~~ dd. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).

~~cc.~~ ee. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).

b. Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

c. Fenethylline.

~~b.~~ d. (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

e. Methcathinone (also known as (2-methylamino-1-phenylpropan- 1-one).

~~c.~~ f. N-ethylamphetamine.

~~d.~~ g. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.)

SECTION 3. A new subdivision to subsection 4 of section 19-03.1-11 of the North Dakota Century Code is created and enacted as follows:

Zolpidem.

SECTION 4. AMENDMENT. Subsection 5 of section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

5. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

~~a. Propylhexedrine.~~

~~b.~~ Pyrovalerone.

[2] **SECTION 5. AMENDMENT.** Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the state department of health and consolidated laboratories, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

5. Notwithstanding any statute or rule to the contrary, the defendant may subpoena the state toxicologist or the director of the ~~consolidated laboratories branch~~ forensic sciences division of the state department of health and consolidated laboratories or any employee of either to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

Approved April 7, 1993
Filed April 8, 1993

[2] NOTE: Section 19-03.1-37 was also amended by section 3 of Senate Bill No. 2161, chapter 218, and by section 1 of Senate Bill No. 2336, chapter 222.

CHAPTER 221

SENATE BILL NO. 2058
(Senators Nalewaja, Evanson, Nelson)
(Representatives Carlisle, Mahoney)

FORFEITED PROPERTY LAW ENFORCEMENT USE

AN ACT to create and enact a new subdivision to subsection 5 of section 19-03.1-36 of the North Dakota Century Code, relating to use of forfeited property by law enforcement agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 5 of section 19-03.1-36 of the North Dakota Century Code is created and enacted as follows:

Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 3 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 222

SENATE BILL NO. 2336
(Senator W. Stenehjem)

ANALYTICAL REPORT AS EVIDENCE

AN ACT to amend and reenact subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to the receipt of certified copy of analytical findings as prima facie evidence of test results in prosecutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 4 of section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

4. In all prosecutions under this chapter or chapter 12.1-31.1 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the consolidated laboratories branch of the department of health and consolidated laboratories, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

Approved March 25, 1993
Filed March 26, 1993

[1] NOTE: Section 19-03.1-37 was also amended by section 5 of Senate Bill No. 2093, chapter 220, and by section 3 of Senate Bill No. 2161, chapter 218.

CHAPTER 223

HOUSE BILL NO. 1117
(Agriculture Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

COMMERCIAL FEED REPORTS

AN ACT to amend and reenact section 19-13.1-06 of the North Dakota Century Code, relating to commercial feed tonnage reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. Inspection fees. There must be paid to the department for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are exempted if the inspection fee is paid on the commercial feeds that they contain, and distribution of commercial feeds to manufacturers is exempted if the commercial feeds so distributed are used solely in manufacture of feeds that are registered. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the ~~fifteenth~~ thirty-first day of January ~~and July~~ of each year, ~~a semiannual~~ an annual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding ~~six months~~ year; and upon filing such statement shall pay the inspection fee. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee.

2. Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein constitutes sufficient cause for the cancellation of all licenses on file for the distributor.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 224

SENATE BILL NO. 2162
(Agriculture Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

FERTILIZER REPORTS

AN ACT to amend and reenact section 19-20.1-06 of the North Dakota Century Code, relating to fertilizer tonnage reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports. There must be paid to the department for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms] as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the department, on forms furnished by the department, ~~a semiannual~~ an annual statement for the ~~periods ending December thirty-first and June thirtieth~~ calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during such period. The statement is due on or before ~~the end of the month following each semiannual period~~ January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made ~~within thirty days after the end of the semiannual period~~ by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount shall be assessed against the licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the licensee.

Approved March 10, 1993
Filed March 11, 1993

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 225

SENATE BILL NO. 2506
(Senator Freborg)

RECREATION LAND REFUSE PENALTY

AN ACT to amend and reenact section 20.1-01-25 of the North Dakota Century Code, relating to depositing refuse on recreation lands; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-25 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-25. Deposit of refuse unlawful - Penalty. The deposit of litter, refuse, rubbish, bottles, cans, or other waste materials, on or in the vicinity of any game refuge, lake, river, public park, or recreation area is prohibited. Police officers, sheriffs, deputies, and game and fish department personnel shall enforce this section. Any person who willfully violates this section is guilty of ~~a class 1 noncriminal offense~~ an infraction.

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

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 226

SENATE BILL NO. 2521
(Senators O'Connell, Krauter, Marks)
(Representatives Brown, Schindler, Stenson)

SPECIAL HUNTING PERMITS

AN ACT to amend and reenact subsection 11 of section 20.1-02-05 of the North Dakota Century Code, relating to powers of the director of the game and fish department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

11. Issue, at the director's discretion, special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife or who have lost the use of an arm at or below the elbow. The application must be accompanied by a physician's statement verifying the person's condition. A permit issued under this subsection allows the permittee to drive, or to be driven, on to any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, may be a hunter, unless the other person is also a permittee. Provided, however, that the land is privately owned and if the permittee is not going to drive or be driven along an established road or trail, the permittee must first obtain the consent of the owner or tenant to hunt on the land in the manner provided in this title.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 227

HOUSE BILL NO. 1514
(Representatives Henegar, A. Carlson, Torgerson)
(Senators B. Stenehjem, Mathern, Jerome)
(Approved by the Delayed Bills Committee)

MOTORBOAT PROGRAMS AND FEES

AN ACT to create and enact two new sections to chapter 20.1-02 of the North Dakota Century Code, relating to the creation of the motorboat programs and safety account; to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to motorboat license fees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Motorboat programs and safety account - Use. The director shall deposit all motorboat license fees in a special account within the game and fish fund to be known as the motorboat programs and safety account. Funds placed in the motorboat programs and safety account and interest earned on the account may be used only for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat licensing administration.

[1] **SECTION 2.** A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Motorboat programs and safety account - Transfer from highway tax distribution fund. On July first of each year the state treasurer shall transfer from the highway tax distribution fund, before allocation of the fund under section 54-27-19, to the motorboat programs and safety account an amount equal to two dollars and fifty cents multiplied by the number of motorboats licensed with the game and fish department as of July first of that year.

SECTION 3. AMENDMENT. Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

[2] **20.1-03-12. Schedule of fees for licenses and permits.** The various license and permit fees shall be as follows:

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[1] NOTE: Section 2 was vetoed by the Governor, see chapter 651.

[2] NOTE: Section 20.1-03-12 was also amended by section 6 of House Bill No. 1012, chapter 12; by sections 2 and 3 of House Bill No. 1180, chapter 229; and by section 1 of House Bill No. 1355, chapter 234.

1. For a resident, age nineteen and over small game hunting license, six dollars, and for a resident, under the age of nineteen small game hunting license, three dollars.

2. For a nonresident small game hunting license, fifty dollars.

3. For a resident big game hunting license, eighteen dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.

4. For a nonresident big game hunting license, one hundred dollars, and for a nonresident bow license, one hundred dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.

5. For a resident fur-bearer license, seven dollars.

6. For a resident fishing license, nine dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee shall be three dollars.

7. For a nonresident fishing license, twenty dollars.

8. For a nonresident short-term seven-day fishing license, thirteen dollars.

9. For a resident husband and wife fishing license, thirteen dollars.

10. For a nonresident nongame hunting license, fifteen dollars.

11. For resident and nonresident special permits to hunt deer in certain restricted areas, one dollar.

12. For a wild turkey permit, five dollars.

13. For an annual general game license, three dollars.

14. For a permit to propagate, domesticate, or possess protected wildlife, five dollars.

15. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.

16. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by him within this state.

17. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.

18. For an annual license to practice taxidermy, four dollars.

19. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than his home or to points outside of this state, three dollars.

20. For a permit to make collections of protected birds and animals for scientific purposes, two dollars.

21. For a permit to ship live protected birds or animals to points either within or outside this state, two dollars per permit. A permit shall be attached to each shipment.

22. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, ~~nine~~ twelve dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, ~~twenty-one~~ twenty-four dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, ~~thirty~~ thirty-three dollars. ~~It is the intent of the legislative assembly that the increase in motorboat license fees, as provided by the 1981 and 1989 amendments to this subsection, be used for providing matching funds for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat registration administration.~~

23. To operate watercraft used for hire, the following license fees shall apply for three years:

Class 1. Each craft capable of carrying two adults of average weight, six dollars.

Class 2. Each craft capable of carrying three adults of average weight, six dollars.

Class 3. Each craft capable of carrying four adults of average weight, six dollars.

Class 4. Each craft capable of carrying five adults of average weight, six dollars.

Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.

Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.

Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.

Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.

24. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, six dollars for each hoop-net or trap, two dollars for each setline, and six dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.

25. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, five dollars for each unit.

26. For an annual license to peddle fish species abounding in waters of this state, three dollars.

27. For an annual license to sell minnows or other live bait at wholesale, thirty dollars.

28. For an annual license to sell minnows or other live bait at retail, eight dollars.

29. For an annual license to operate a private fish hatchery, thirty dollars.

30. For a resident commercial frog license, fifty dollars.

31. For a nonresident commercial frog license, two hundred dollars.

32. For a resident frog license, three dollars.

33. For a resident husband and wife frog license, five dollars.

34. For a shooting preserve operating permit:

    a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or

    b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare]

    over six hundred forty acres [259 hectares].

35. For an annual license to guide, one hundred dollars.

36. For a nonresident waterfowl hunting license, eight dollars.

37. For a nonresident husband and wife fishing license, thirty-five dollars.

38. For a trout and salmon license stamp, four dollars.

39. For a nonresident short-term three-day fishing license, eight dollars.

40. For a nonresident short-term three-day small game hunting license, issued between November fifteenth and the close of the upland game hunting season, thirty dollars.

41. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.

42. For a combination license, twenty-five dollars.

43. For a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents, two hundred ~~and~~ fifty dollars.

44. For a resident swan license, five dollars.

45. For a nonresident swan license, twenty dollars.

46. For a resident and nonresident sandhill crane license, five dollars.

47. For a resident commercial clam license, one hundred dollars.

48. For a nonresident commercial clam license, one thousand dollars.

49. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the commissioner a surety bond in the sum of two thousand dollars.

The fees for these licenses and permits, except for motorboat license fees, must be deposited with the state treasurer and credited to the game and fish fund.

SECTION 4. EFFECTIVE DATE. This Act becomes effective only if House Bill No. 1399 is approved by the fifty-third legislative assembly and becomes effective. If this Act takes effect, section 1 of this Act becomes effective on August 1, 1993, section 2 of this Act becomes effective on June 30, 1995, and the increase in motorboat license fees as provided by section 3 of this Act becomes effective on January 1, 1996.

Approved May 5, 1993
Filed May 6, 1993

CHAPTER 228

HOUSE BILL NO. 1243
(Representatives Oban, Belter, Hanson)
(Senators Tallackson, Nelson, Yockim)

BOWHUNTER EDUCATION

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to bowhunter education requirements; to provide a penalty; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Additional education requirement for bowhunters - Standards - Penalty. After July 1, 1997, in addition to successfully completing the course of instruction required by sections 20.1-03-01.1 through 20.1-03-01.3, any person born after August 31, 1981, must satisfactorily complete the course of instruction required by this section before that person may obtain a license to hunt game by bow and arrow in this state. By June 30, 1993, the director shall enter into a memorandum of understanding with the North Dakota bowhunters association specifying the obligations of both the department and the association regarding all aspects of course administration, instruction, and student certification. The director shall issue a certificate of completion to every person satisfactorily completing the course of instruction. A certificate of completion issued by any other state or by any province of Canada that bases its course of instruction upon international bowhunter education program standards satisfies the requirements of this section. A person who purchases or attempts to purchase a license to hunt game by bow and arrow in violation of this section is guilty of a class 2 noncriminal offense.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act expires on July 1, 1993, unless the director of the game and fish department certifies to the governor and the secretary of state, before July 1, 1993, that the director has entered into a memorandum of understanding with the North Dakota bowhunters association as provided in section 1 of this Act. Section 1 of this Act expires on August 1, 1997, unless the director of the game and fish department certifies to the governor and the secretary of state, before August 1, 1997, that the director has entered into a continuing memorandum of understanding with the North Dakota bowhunters association. If a continuing memorandum of understanding has been entered, section 1 of this Act expires August 1, 1999. The secretary of state shall forward a copy of the director's certification or certifications to the legislative council, with a notation indicating the effective date or effective dates of section 1 of this Act.

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

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 229

HOUSE BILL NO. 1180
(Natural Resources Committee)
(At the request of the Game and Fish Department)

GAME AND FISH LICENSE FEES

AN ACT to amend and reenact sections 20.1-03-04, 20.1-03-12, and 20.1-03-12.2 of the North Dakota Century Code, relating to licenses and permits for game, fish, predators, and boating; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-04. When licenses to hunt, fish, or trap not required of residents. Subject to the provisions of this title:

1. Any resident, or any member of ~~his~~ the resident's family residing customarily with ~~him~~ the resident, may hunt small game, fish, or trap during the open season without a license upon land owned or leased by ~~him~~ the resident.

2. Residents or nonresidents under the age of sixteen years may fish without a ~~resident~~ fishing license.

3. Residents may fish at a private fish hatchery without a resident fishing license.

4. Developmental center at Grafton patients, state industrial school students, school for the deaf students, school for the blind students, state hospital patients, community health and retardation service unit patients under direct therapeutic care, and residents of facilities licensed by the state department of health and consolidated laboratories and the state department of human services may fish without a resident fishing license. Patients of these institutions must be identified. The department shall issue authority to each institution.

5. ~~Repealed by S.L. 1973, ch. 207, § 1.~~

~~6.~~ Residents may fish without a resident fishing license or trout and salmon license stamp on free fishing days. The dates of these free fishing days may be set by proclamation by the governor.

6. Residents under age sixteen may take furbearers without a furbearer license.

7. Residents under age sixteen may take small game or waterfowl without a small game license.

SECTION 2. AMENDMENT. Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

[1] **20.1-03-12. Schedule of fees for licenses and permits.** The various license and permit fees ~~shall be~~ are as follows:

1. For a resident, age ~~nineteen~~ sixteen and over small game hunting license, six dollars~~, and for a resident, under the age of nineteen small game hunting license, three dollars~~.

2. For a nonresident small game hunting license, ~~fifty~~ seventy-five dollars.

3. For a resident big game hunting license, ~~eighteen~~ twenty dollars, except the fee for a licensee under age sixteen is ten dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.

4. For a nonresident big game hunting license, one hundred fifty-five dollars, and for a nonresident bow license, one hundred fifty-five dollars, and a nonrefundable five dollar application fee must accompany any lottery license fee under this subsection, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.

5. For a resident fur-bearer license, seven dollars.

6. For a resident fishing license, nine dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee ~~shall be~~ is three dollars.

7. For a nonresident fishing license, twenty dollars.

8. For a nonresident short-term seven-day fishing license, thirteen dollars.

9. For a resident husband and wife fishing license, thirteen dollars.

10. For a nonresident nongame hunting license, fifteen dollars.

11. ~~For resident and nonresident special permits to hunt deer in certain restricted areas, one dollar.~~

~~12.~~ For a wild turkey permit, ~~five~~ eight dollars.

~~13.~~ 12. For an annual general game license, three dollars.

~~14.~~ 13. For a permit to propagate, domesticate, or possess protected wildlife, five dollars.

~~15.~~ 14. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or

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[1] NOTE: Section 20.1-03-12 was also amended by section 6 of House Bill No. 1012, chapter 12; by section 1 of House Bill No. 1355, chapter 234; and by section 3 of House Bill No. 1514, chapter 227.

comparable license in that person's state of residence, or fifty dollars, whichever is greater.

~~16.~~ 15. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by ~~him~~ that person within this state.

~~17.~~ 16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.

~~18.~~ 17. For an annual license to practice taxidermy, ~~four~~ twenty-five dollars.

~~19.~~ 18. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than ~~his~~ that person's home or to points outside of this state, three dollars.

~~20.~~ 19. For a permit to make collections of protected birds and animals for scientific purposes, ~~two~~ ten dollars.

~~21. For a permit to ship live protected birds or animals to points either within or outside this state, two dollars per permit. A permit shall be attached to each shipment.~~

~~22.~~ 20. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, nine dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, twenty-one dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, thirty dollars. It is the intent of the legislative assembly that the increase in motorboat license fees, as provided by the 1981 and 1989 amendments to this subsection, be used for providing matching funds for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat registration administration.

~~23.~~ 21. To operate watercraft used for hire, the following license fees ~~shall~~ apply for three years:

Class 1. Each craft capable of carrying two adults of average weight, six dollars.

Class 2. Each craft capable of carrying three adults of average weight, six dollars.

Class 3. Each craft capable of carrying four adults of average weight, six dollars.

Class 4. Each craft capable of carrying five adults of average weight, six dollars.

Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.

Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.

Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.

Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.

~~24.~~ 22. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, ~~six~~ fifteen dollars for each hoop-net or trap, ~~two dollars for each setline,~~ and ~~six~~ fifteen dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.

~~25.~~ 23. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, ~~five~~ ten dollars for each unit.

~~26.~~ 24. For an annual license to peddle fish species abounding in waters of this state, three dollars.

~~27.~~ 25. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.

~~28.~~ 26. For an annual license to sell minnows or other live bait at retail, ~~eight~~ fifteen dollars, except the fee is seventy-five dollars if white suckers are sold.

~~29.~~ 27. For an annual license to operate a private fish hatchery, ~~thirty~~ seventy-five dollars.

~~30.~~ 28. For a resident commercial frog license, fifty dollars.

~~31.~~ 29. For a nonresident commercial frog license, two hundred dollars.

~~32.~~ 30. For a resident frog license, three dollars.

~~33.~~ 31. For a resident husband and wife frog license, five dollars.

~~34.~~ 32. For a shooting preserve operating permit:

a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or

b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].

~~35.~~ 33. For an annual license to guide for both hunting and fishing, one hundred fifty dollars.

34. For an annual license to guide only for hunting, one hundred dollars.

35. For an annual license to guide only for fishing, one hundred dollars.

36. For a nonresident waterfowl hunting license, ~~eight~~ ten dollars.

37. For a nonresident husband and wife fishing license, thirty-five dollars.

38. For a trout and salmon license stamp, four dollars.

39. For a nonresident short-term three-day fishing license, eight dollars.

40. ~~For a nonresident short-term three-day small game hunting license, issued between November fifteenth and the close of the upland game hunting season, thirty dollars.~~

~~41.~~ For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.

~~42.~~ 41. For a combination license, twenty-five dollars.

~~43.~~ 42. For a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents, two hundred and fifty dollars.

~~44.~~ 43. For a resident swan license, five dollars.

~~45.~~ 44. For a nonresident swan license, ~~twenty~~ twenty-five dollars.

~~46.~~ 45. For a resident and nonresident sandhill crane license, five dollars.

~~47.~~ 46. For a resident commercial clam license, one hundred dollars.

~~48.~~ 47. For a nonresident commercial clam license, one thousand dollars.

~~49.~~ 48. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the commissioner a surety bond in the sum of two thousand dollars.

The fees for these licenses and permits must be deposited with the state treasurer and credited to the game and fish fund.

[2] **SECTION 3. AMENDMENT.** Subsections 7, 8, 19, 26, and 39 of section 20.1-03-12 of the North Dakota Century Code are amended and reenacted as follows:

7. For a nonresident fishing license, ~~twenty~~ twenty-five dollars.

8. For a nonresident short-term seven-day fishing license, ~~thirteen~~ fifteen dollars.

19. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than ~~his~~ that person's home or to points outside ~~of~~ this state, three dollars. For a resident certificate fee, one dollar, and for a nonresident certificate

[2] NOTE: Section 20.1-03-12 was also amended by section 6 of House Bill No. 1012, chapter 12; by section 1 of House Bill No. 1355, chapter 234; and by section 3 of House Bill No. 1514, chapter 227.

fee, two dollars. An agent may not charge a service fee for issuing a resident or nonresident certificate fee.

26. For ~~an annual license to peddle fish species abounding in waters of this state~~ a resident or nonresident paddlefish tag annual license, three dollars per tag.

39. For a nonresident short-term three-day fishing license, ~~eight~~ ten dollars.

SECTION 4. AMENDMENT. Section 20.1-03-12.2 of the North Dakota Century Code is amended and reenacted as follows:

[3] **20.1-03-12.2. Hunting license and permit application fees.** Each ~~person~~ resident applying for a license or permit to hunt elk, moose, or bighorn sheep~~, or antelope~~ under this chapter must be assessed a nonrefundable application fee of three dollars for each license or permit application in addition to the fee charged for the issuance of the license or permit under this chapter.

SECTION 5. EFFECTIVE DATE. Section 3 of this Act becomes effective on April 1, 1994.

Approved April 14, 1993
Filed April 15, 1993

[3] NOTE: Section 20.1-03-12.2 was also amended by section 2 of House Bill No. 1355, chapter 234.

CHAPTER 230

HOUSE BILL NO. 1083
(Natural Resources Committee)
(At the request of the Game and Fish Department)

FISHING LICENSE EXEMPTIONS

AN ACT to create and enact a new subsection to section 20.1-03-04 of the North Dakota Century Code, relating to times when residents may fish without a license; and to amend and reenact section 20.1-03-08 of the North Dakota Century Code, relating to times when nonresidents may fish without a license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-04 of the North Dakota Century Code is created and enacted as follows:

Residents who are enrolled as students or serving as certified instructors during official aquatics education program events of the game and fish department may be granted free fishing privileges by discretion of the director.

SECTION 2. AMENDMENT. Section 20.1-03-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-08. When licenses to fish not required of nonresident. Subject to other provisions of this title, any nonresident under the age of sixteen years may fish without a nonresident fishing license if accompanied by an adult possessing a valid fishing license. Any nonresident may fish in the waters of a private fish hatchery without a nonresident fishing license. Nonresidents approved by the department and serving as instructors at official aquatics education events may fish without a license at the discretion of the director.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 231

SENATE BILL NO. 2476
(Senator Andrist)
(Representatives Coats, Rennerfeldt, Torgerson)

GUIDE OR OUTFITTER DEER LICENSES

AN ACT to amend and reenact subsection 4 of section 20.1-03-11 and section 20.1-03-11.2 of the North Dakota Century Code, relating to nonresident deer licenses and white-tailed deer licenses provided to guides and outfitters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The number of nonresident deer licenses and permits issued for the season to hunt deer with guns shall not exceed one~~ One percent of the total deer licenses and permits to hunt deer with guns to be issued in any unit or subunit as described in the governor's proclamation must be allocated for nonresidents.

SECTION 2. AMENDMENT. Section 20.1-03-11.2 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-11.2. Guides and outfitters - White-tailed deer licenses - Fees. The governor shall make ~~any~~ one-half of the antlered white-tailed deer licenses ~~remaining after the second sale~~ and permits allocated to nonresidents under subsection 4 of section 20.1-03-11, up to a maximum of one hundred licenses, available to guides or outfitters licensed in this state. ~~The first one hundred of any such remaining licenses, or all such licenses if less than one hundred remain, must be for antlered deer only.~~ A guide or outfitter may not purchase or obtain more than five white-tailed deer licenses under this section in any one year. A guide or outfitter shall pay the fee required for a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents for each license purchased under this section. A guide or outfitter may provide to nonresidents, for compensation, big game guiding and outfitting services and one white-tailed deer license per nonresident as provided in this section to hunt white-tailed deer in the manner, at the places, and during the times the governor prescribes by proclamation.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 232

HOUSE BILL NO. 1268
(Representatives Brown, Drovdal, Byerly)
(Senators Dotzenrod, Nalewaja, Urlacher)

LANDOWNER ELK HUNTING LICENSES

AN ACT to amend and reenact subsection 7 of section 20.1-03-11 of the North Dakota Century Code, relating to licenses issued to landowners to hunt elk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

7. A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon payment of the fee requirement for a resident big game license and filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a district or unit open for hunting of elk, a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: that portion of township one hundred forty-seven north, range ninety-five west which is north and west of state highway twenty-two; township one hundred forty-six north, range ninety-six west; township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; ~~and~~ the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County; and other areas within a district or unit open for hunting of elk as prescribed in the governor's proclamation. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6.

Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 233

HOUSE BILL NO. 1495
(Representatives Wilkie, A. Olson, Sveen)
(Senators Lindaas, O'Connell, Sand)

LANDOWNER MOOSE HUNTING

AN ACT to create and enact a new subsection to section 20.1-03-11 of the North Dakota Century Code, relating to licenses issued to landowners to hunt moose; and to amend and reenact section 20.1-08-04.2 of the North Dakota Century Code, relating to the governor's proclamation concerning the hunting of moose.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1277 does not become effective, a new subsection to section 20.1-03-11 of the North Dakota Century Code is created and enacted as follows:

A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon paying the fee for a resident big game license and filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a district or unit open for hunting of moose, a preferential landowner license to hunt moose. The license must include a description of the land described in the affidavit and may be used to hunt moose only upon that land. If a license under this subsection is issued for a district or unit, at least one license must be issued under this subsection for that district or unit for hunting moose. The number of licenses issued under this subsection for a district or unit may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for that district or unit. If the number of eligible persons who apply for a license under this subsection exceeds the number of licenses available under this subsection, the licenses must be issued by lottery as prescribed in the governor's proclamation. A license to hunt moose may not be issued under this subsection for a district or unit open for the hunting of moose when the total number of licenses allocated to that district or unit is less than ten. A person who receives a license under this subsection is not eligible to apply for a license to hunt moose in future years.

SECTION 2. If House Bill No. 1277 is approved by the fifty-third legislative assembly and becomes effective, a new subsection to section 20.1-03-11 of the North Dakota Century Code is created and enacted as follows:

A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon paying the fee for a resident big game license and filing an affidavit describing a minimum of a quarter section [64.75 hectares] of land that is leased for agricultural purposes or owned by that person and which is within a

district or unit open for hunting of moose, a preferential landowner license to hunt moose. The license must include a description of the land described in the affidavit and may be used to hunt moose only upon that land. If a license under this section is issued for a district or unit, at least one license must be issued under this subsection for that district or unit for hunting moose. The number of licenses issued under this subsection for a district or unit may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for that district or unit. If the number of eligible persons who apply for a license under this subsection exceeds the number of licenses available under this subsection, the licenses must be issued by lottery as prescribed in the governor's proclamation. A license to hunt moose may not be issued under this subsection for a district or unit open for the hunting of moose when the total number of licenses allocated to that district or unit is less than ten. A person who receives a license under this subsection is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2.

SECTION 3. AMENDMENT. If House Bill No. 1277 does not become effective, section 20.1-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.2. Governor's proclamation concerning the hunting of moose - License recipients not eligible to apply again. The governor may by proclamation provide for a season to hunt moose in ~~such~~ a manner, number, places, and times as ~~he~~ the governor shall prescribe. Licenses to hunt moose must be issued by lottery, except as provided under section 1 of this Act, with only residents eligible to apply. Each person who has received a license to hunt moose is not eligible to apply for another such license.

SECTION 4. AMENDMENT. If House Bill No. 1277 is approved by the fifty-third legislative assembly and becomes effective, section 20.1-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

[1] **20.1-08-04.2. Governor's proclamation concerning the hunting of moose - License recipients not eligible to apply again.** The governor may by proclamation provide for a season to hunt moose in ~~such~~ a manner, number, places, and times as ~~he~~ the governor shall prescribe. Licenses to hunt moose must be issued by lottery, except as provided under section 2 of this Act, with only residents eligible to apply. Each person who has received a license to hunt moose is not eligible to apply for another such license.

Approved April 8, 1993
Filed April 9, 1993

[1] NOTE: Section 20.1-08-04.2 was also amended by section 1 of House Bill No. 1277, chapter 235.

CHAPTER 234

HOUSE BILL NO. 1355
(Representatives A. Carlson, R. Berg, Austin)
(Senator Nalewaja)

BIGHORN SHEEP LICENSES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to game and fish license fees; and to amend and reenact sections 20.1-03-12.2 and 20.1-08-04.1 of the North Dakota Century Code, relating to hunting license and permit application fees and participation by nonresidents in the bighorn sheep license lottery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1.** A new subsection to section 20.1-03-12 of the North Dakota Century Code is created and enacted as follows:

For a bighorn sheep license issued to a nonresident, five hundred dollars.

SECTION 2. AMENDMENT. Section 20.1-03-12.2 of the North Dakota Century Code is amended and reenacted as follows:

[2] **20.1-03-12.2. Hunting license and permit application fees.** Each person applying for a license or permit to hunt elk, moose, ~~bighorn sheep,~~ or antelope and each resident applying for a license or permit to hunt bighorn sheep under this chapter must be assessed a nonrefundable application fee of three dollars for each license or permit application in addition to the fee charged for the issuance of the license or permit under this chapter. Each nonresident applying for a license or permit to hunt bighorn sheep under this chapter must be assessed a nonrefundable application fee of one hundred dollars in addition to the fee charged for the issuance of a license or permit to hunt bighorn sheep under this chapter.

SECTION 3. AMENDMENT. Section 20.1-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.1. Governor's proclamation concerning the hunting of bighorn sheep - License recipients not eligible to apply again. The governor may by proclamation provide for a season to hunt bighorn sheep in such manner, number, places, and times as ~~he shall prescribe~~ the governor prescribes. Licenses to hunt bighorn sheep must be issued by lottery ~~with only residents eligible to apply~~; however, the governor may by proclamation auction to the highest bidder, whether resident or nonresident,

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[1] NOTE: Section 20.1-03-12 was also amended by section 6 of House Bill No. 1012, chapter 12; by sections 2 and 3 of House Bill No. 1180, chapter 229; and by section 3 of House Bill No. 1514, chapter 227.

[2] NOTE: Section 20.1-03-12.2 was also amended by section 4 of House Bill No. 1180, chapter 229.

a license to hunt bighorn sheep in such manner, number, places, and times as the governor prescribes. Upon payment of the nonrefundable application fee required by section 20.1-03-12.2, a nonresident may participate in the lottery. One license to hunt bighorn sheep may be issued to a nonresident participating in the lottery. If a nonresident is issued a license to hunt bighorn sheep, no other nonresident may be issued a license to hunt bighorn sheep through the lottery. If all of the licenses to hunt bighorn sheep made available through the lottery are issued to residents, then a nonresident is not eligible to be issued a license to hunt bighorn sheep through the lottery. Each person who has received a license to hunt bighorn sheep is not eligible to apply for another ~~such~~ bighorn sheep license.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 235

HOUSE BILL NO. 1277
(Representatives D. Olsen, Shide, Brown)
(Senator Mutch)

GAME WARDEN ASSOCIATION MOOSE LICENSE RAFFLE

AN ACT to amend and reenact section 20.1-08-04.2 of the North Dakota Century Code, relating to creation of a North Dakota game warden association moose license raffle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

[1] **20.1-08-04.2. Governor's proclamation concerning the hunting of moose - ~~License recipients not eligible to apply again~~** North Dakota game warden association raffle. The governor may by proclamation provide for a season to hunt moose in such manner, number, places, and times as ~~he shall prescribe~~ the governor prescribes. Licenses to hunt moose must be issued by lottery with only residents eligible to apply; however, the governor may by proclamation make available to the North Dakota game warden association one license per year to hunt moose in a manner, places, and times as the governor prescribes. The North Dakota game warden association shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. The person who receives the license from the raffle may not transfer the license. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. Fifteen percent of all net proceeds must be remitted to the department and used for moose management and related projects in this state. All remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement officers association game warden museum located at the international peace garden. ~~Each~~ The governor may not make more than a total of five licenses available to the North Dakota game warden association under this section. A person ~~who has received a~~ may only receive one license to hunt moose ~~is not eligible to apply for another such license~~ issued by lottery and one license to hunt moose through the North Dakota game warden association raffle in a lifetime.

Approved March 22, 1993
Filed March 23, 1993

[1] NOTE: Section 20.1-08-04.2 was also amended by section 4 of House Bill No. 1495, chapter 233.

CHAPTER 236

SENATE BILL NO. 2228
(Human Services Committee)
(At the request of the Office of Management and Budget)

STATE TOXICOLOGIST OFFICE TRANSFER

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to the powers and duties of the state toxicologist within the state department of health and consolidated laboratories; to amend and reenact subsections 2 and 4 of section 20.1-13.1-08, subsection 6 of section 20.1-13.1-10, subsections 2 and 4 of section 20.1-15-08, subsection 8 of section 20.1-15-11, subsection 1 of section 28-32-01, subsections 2 and 4 of section 39-20-05, and subsection 8 of section 39-20-07 of the North Dakota Century Code, relating to the merger of the office of the state toxicologist with the state department of health and consolidated laboratories; and to repeal section 15-12-21 of the North Dakota Century Code, relating to the office of the state toxicologist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 20.1-13.1-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from ~~the office of~~ the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that that person may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, any copy of a certified copy of an analytical report of a blood, urine, or

saliva sample received by the director from ~~the office of~~ the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of ~~the office of~~ the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from ~~the office of~~ the state toxicologist or the clerk of district court, are regularly kept records of the director.

SECTION 2. AMENDMENT. Subsection 6 of section 20.1-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by ~~the office of~~ the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

SECTION 3. AMENDMENT. Subsections 2 and 4 of section 20.1-15-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from ~~the office of~~ the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from ~~the office of~~ the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of ~~the office of~~ the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received

by the director from ~~the office of~~ the state toxicologist or the clerk of district court, are regularly kept records of the director.

SECTION 4. AMENDMENT. Subsection 8 of section 20.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

8. A certified copy of the analytical report of a blood, urine, or saliva test issued by ~~the office of~~ the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

SECTION 5. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Duties of state toxicologist. The state toxicologist must be maintained in connection with the state department of health and consolidated laboratories. The department shall employ the services of a qualified toxicologist who must be the state toxicologist. The state toxicologist with the approval of the state health officer may designate such qualified deputy state toxicologists as may be necessary to exercise the authority and responsibility prescribed by law for the state toxicologist. The state toxicologist may charge fees for services rendered. The results of toxicological or chemical testing or analysis, other than provided for in section 39-20-13, made by the state toxicologist at the request of law enforcement agencies for criminal investigation or at the request of physicians for clinical evaluation and treatment may not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the state department of health and consolidated laboratories to anyone other than the person or agency requesting the test or analysis or to any other person upon whom the toxicological or chemical test was performed or the person's authorized representative, except the state toxicologist may permit the inspection of the reports of any such tests or analysis results by any other person having a proper interest therein. Any customer, employee, or agency affected by the transfer of the state toxicologist from North Dakota state university of agriculture and applied science to the department must be given at least ninety days' notice before the physical transfer occurs.

[1] **SECTION 6. AMENDMENT.** Subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

   a. The office of management and budget except with respect to rules relating to the central personnel system as authorized under section

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[1] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1264, 1336, and 1400 and Senate Bill No. 2215, chapters 135, 186, 328, 327, 80, and 173.

54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

b. The adjutant general with respect to the division of emergency management.

c. The council on the arts.

d. The state auditor.

e. The department of economic development and finance.

f. The dairy promotion commission.

g. The education factfinding commission.

h. The educational telecommunications council.

i. The board of equalization.

j. The board of higher education.

k. The Indian affairs commission.

l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.

m. The department of corrections and rehabilitation.

n. The board of pardons.

o. The parks and tourism department.

p. The parole board.

q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.

r. The state board of public school education while administering the state school construction fund.

s. The state fair association.

t. The state ~~toxicologist~~ department of health and consolidated laboratories with respect to the state toxicologist.

u. The board of university and school lands except with respect to activities under chapter 47-30.1.

v. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans'

home and the implementation of programs or services provided by the veterans' home.

w. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

[2] **SECTION 7. AMENDMENT.** Subsections 2 and 4 of section 39-20-05 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having a blood alcohol concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the commissioner and at a time and place designated by the commissioner. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance; whether the person was placed under arrest; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from ~~the office of~~ the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the blood alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

4. At a hearing under this section, the regularly kept records of the commissioner may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the commissioner from ~~the office of~~ the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the commissioner from a certified breath test operator, and any copy of a certified copy of a certificate of ~~the office of~~ the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for blood alcohol concentration received by the commissioner from ~~the office of~~ the state toxicologist or the clerk of district court, are regularly kept records of the commissioner.

SECTION 8. AMENDMENT. Subsection 8 of section 39-20-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A certified copy of the analytical report of a blood, urine, or saliva analysis issued by ~~the office of~~ the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter.

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[2] NOTE: Section 39-29-05 was also amended by section 5 of House Bill No. 1098, chapter 387, and section 3 of Senate Bill No. 2136, chapter 389.

SECTION 9. REPEAL. Section 15-12-21 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 237

HOUSE BILL NO. 1405
(Representatives Tollefson, Torgerson)
(Senator Krebsbach)

WINDSURFING AND BOARDSAILING

AN ACT to amend and reenact subsection 3 of section 20.1-13-10 of the North Dakota Century Code, relating to windsurfing or boardsailing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 20.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

3. The provisions of subsections 1 and 2 do not apply to a performer engaged in a professional exhibition or a person ~~or persons~~ engaged in an activity authorized under section 20.1-13-11, and the provisions of subsection 1 do not apply to a person sixteen years of age or older engaged in windsurfing or boardsailing.

Approved April 9, 1993
Filed April 9, 1993

GOVERNMENTAL FINANCE

CHAPTER 238

SENATE BILL NO. 2085
(Political Subdivisions Committee)
(At the request of the North Dakota Municipal Bond Bank)

CERTIFICATES OF INDEBTEDNESS

AN ACT to amend and reenact sections 21-02-10 and 21-02-13 of the North Dakota Century Code, relating to certificates of indebtedness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-02-10 of the North Dakota Century Code is amended and reenacted as follows:

21-02-10. Taxing districts ~~having population over four thousand~~ exempt from certain provisions. Any taxing district ~~having a population of over four thousand~~ may issue certificates of indebtedness in any amount not in excess of uncollected taxes of the current year, plus uncollected taxes of prior years standing to the credit of the district, plus amounts still owed it under currently existing bureau of Indian affairs contracts, plus uncollected distributions of revenue pursuant to a state appropriation or statutory or constitutional provisions, in such form and manner and subject to such terms and conditions as the governing board may prescribe, and need not comply with nor conform to any of the other provisions of this chapter pertaining to the issuance of certificates of indebtedness unless such board shall choose to avail itself of such provisions.

SECTION 2. AMENDMENT. Section 21-02-13 of the North Dakota Century Code is amended and reenacted as follows:

21-02-13. Certificates of indebtedness in anticipation of revenue to be received from the state. Any political subdivision which will receive a distribution of revenue pursuant to a state appropriation or statutory or constitutional provision shall, in anticipation of such revenue, have power to borrow not more than the amount it will receive from that source during that fiscal year. For the purpose of borrowing, all such political subdivisions may issue certificates of indebtedness.

Certificates of indebtedness issued pursuant to this section must provide for payment by the political subdivision of a stated sum on or before a specified date not more than six months after the anticipated date of receipt of the revenue, together with interest thereon at a specified rate not exceeding twelve percent per annum if sold at private sale. There is no interest rate ceiling on certificates sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. The certificates are payable out of the anticipated revenue.

For the purpose of administering the provisions of this section, all of the provisions of this chapter, to the extent consistent herewith, that relate to signing and issuance of certificates of indebtedness, the certificate of the county auditor on the certificates of indebtedness, the recording of certificates of indebtedness, certifying the amount to be received from the state by a political

subdivision, setting aside the amount to be received for payment of the certificates, order of payment of such certificates, and advertising for bids, ~~including the exceptions for taxing districts over four thousand in population~~ subject to section 21-02-10, govern the administration of the provisions of this section.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 239

SENATE BILL NO. 2454
(Senator Lindgren)

BOND REQUIREMENTS

AN ACT to amend and reenact sections 21-03-01, 21-03-02, 21-03-21, 21-03-26, 21-03-27, 21-03-28, 21-03-40, and 40-01-06 of the North Dakota Century Code, relating to general obligation bonds of municipalities and the execution of bonds, contracts, and conveyances; and to repeal sections 21-03-21.1, 21-03-22, 21-03-31, and 21-03-32 of the North Dakota Century Code, relating to the opinion of the attorney general as to legality for investment, recording of bonds, notice of sale to the Bank of North Dakota, and purchase of bonds by state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-01 of the 1992 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Governing body" means a board of county commissioners, city council, board of city commissioners, school board of any school district, and the similarly constituted and acting board of any other municipality enumerated in subsection ~~1~~ 3.

2. "Initial resolution" means any resolution or ordinance adopted pursuant to section 21-03-09, by which a proceeding is instituted for the purpose of authorizing a municipality to borrow money and issue bonds.

3. "Municipality" means a county, city, township, public school district, park district, recreation service district, or rural fire protection district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue.

4. "Population of a municipality" means its population according to the last officially published United States or state census, whichever was taken latest.

5. "Recorded" means copied at length in the record book required by section 21-03-17.

6. "Value of taxable property" or "the assessed valuation" of a municipality means the assessed value of all taxable property in such municipality as determined pursuant to chapter 57-02.

SECTION 2. AMENDMENT. Section 21-03-02 of the North Dakota Century Code is amended and reenacted as follows:

[1] **21-03-02. Provisions not applicable to certain issues.** This chapter is not applicable:

1. To ~~issue~~ issues of bonds, warrants, or other forms of public securities issued on account of public improvements and for the payment of which special assessments are or shall be levied upon and against property benefited thereby which do not constitute, at the time of their issuance, a general obligation or fixed liability of the municipality issuing the same, nor the portion of any such issue payable by general taxation on account of assumption of a portion of the cost of such improvement under section 40-24-10 or any similar law. Nothing in this subsection may be construed to prevent the issuance of bonds by any city for the purposes specified in subdivision g of subsection 2 of section 21-03-06.
2. To drainage bonds or irrigation bonds.
3. To refunding of seed and feed bonds under the provisions of sections 11-29-34 to 11-29-38.
4. To borrowing of money in anticipation of tax collections by means of certificates of indebtedness, as provided by chapter 21-02.
5. To revenue bonds under the provisions of chapter 40-35.

SECTION 3. AMENDMENT. Section 21-03-21 of the North Dakota Century Code is amended and reenacted as follows:

21-03-21. Execution of bonds. Municipal bonds must be executed in the name of and for the municipality issuing them, by its qualified officers, who for that purpose shall sign the same by manual or facsimile signatures in their official capacities, as follows:

1. For a county, the chairman of the board of county commissioners and the county auditor.
2. For a city, the mayor or president of the board of city commissioners and the city auditor.
3. Repealed by S.L. 1967, ch. 323, § 285.
4. For any other municipality, the chairman or president of the governing board and the clerk or secretary thereof, or such other officer as the governing body thereof may determine.

The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers. The validity of every bond so executed remains unimpaired by the fact that any subscribing officer has ceased to be such officer before delivery to the purchaser. ~~Every bond~~ Bonds issued by a municipality having an official seal ~~must~~ need not be sealed with such seal. The city auditor, county auditor, clerk, or secretary or such other officer as the governing body of the municipality may determine shall sign an endorsement on the

[1] NOTE: Section 21-03-02 was also amended by section 1 of House Bill No. 1353, chapter 240.

back of each bond certifying that the bond is issued pursuant to law and is within the debt limit of the municipality issuing the bond.

SECTION 4. AMENDMENT. Section 21-03-26 of the North Dakota Century Code is amended and reenacted as follows:

21-03-26. Bonds - Call for bids - How advertised ~~- Copy to tax commissioner - Penalty~~. A notice calling for bids for each proposed issue of municipal bonds must be published at least once in the official newspaper of the ~~county if the municipality is other than a city~~ municipality, or, if the municipality ~~is a city~~ does not have an official newspaper, then in the ~~city's~~ county's official newspaper ~~as provided in section 40-01-09~~, not less than ten days nor more than thirty days before the date specified therein for the receiving of such bids. Such notice may be in any form but must specify the amount of bonds offered for sale and the date of the maturity thereof. ~~A copy of such notice must be mailed to the state tax commissioner at Bismarck not less than ten days before the date specified for the opening bids, and the tax commissioner shall keep such notice on file for public inspection. The county auditor, or the auditor or secretary of the municipality advertising such sale, at the same time shall file with the tax commissioner a statement giving the assessed valuation, the area, the population, and the indebtedness thereof.~~ Failure to publish such notice ~~or to send a copy thereof to the tax commissioner~~ does not impair the validity of such bonds but renders unenforceable any executory contract entered into for the sale thereof. ~~An auditor or secretary failing to publish or to send such notice is subject to a penalty of not more than five hundred dollars, at the discretion of the district court, to be recovered in an action brought by the state's attorney in the name of the state. The penalty, when collected, must be paid into the general fund of the county.~~

SECTION 5. AMENDMENT. Section 21-03-27 of the North Dakota Century Code is amended and reenacted as follows:

21-03-27. Bids - Where received - Record. The notice must specify the time and place at which bids will be received. ~~In case of cities, school districts, or park districts of over four thousand population, the~~ The place where bids shall be received ~~may~~ must be fixed by the governing board and may be within or outside the state. ~~In all other cases, the place must be the county auditor's office.~~ At the time and place specified, the governing board of the taxing district must be represented by one of its officials, or by the county auditor or some other person acting at the request of the board, who shall receive competitive bids, whether submitted orally or in writing. When the bids are received ~~at his office~~, the county auditor, auditor, secretary, or other person acting at the request of the board shall enter in a permanent record the amount and rate of interest of each bid and the name and address of the bidder. ~~If the bids are not received at the office of the county auditor, the auditor or secretary of the municipality shall make a similar record.~~

SECTION 6. AMENDMENT. Section 21-03-28 of the North Dakota Century Code is amended and reenacted as follows:

21-03-28. Bids - Accompanied by draft - Sale to best bidder - Rejection of all bids. All bids must be accompanied by a certified check, cashier's check, surety bond, or bank draft, in the amount of not less than ~~two~~ one percent of the bid. After all bids have been received, they must be delivered forthwith to the governing body of the municipality, which shall award the sale of such bonds to the

bidder who agrees to purchase them upon the terms most favorable to the municipality, unless the governing body determines to reject all bids. The governing body has the right to reject any and all bids. If no bids are received or if all bids received are rejected, the governing body may, without readvertising the bonds for sale, negotiate the sale of all of the bonds to any person upon terms complying with those specified in the notice of sale theretofore published, and if bids were rejected, more favorable to the municipality than those specified in a rejected bid. No sale may be for less than ninety-eight percent of the par value of such bonds plus the interest accrued on the bonds to the date of the delivery thereof.

SECTION 7. AMENDMENT. Section 21-03-40 of the North Dakota Century Code is amended and reenacted as follows:

21-03-40. Sinking funds - Custodian. ~~The county treasurer must be custodian of each sinking fund for the payment of bonds issued by each taxing district within the county except in case of any city or park district having a population of more than one thousand and any school district which upon the passage of a resolution by the school board chooses to have its business manager of the school district be custodian of such sinking fund. In the case of any city or park district having a population of more than one thousand, or a school district approving a resolution as provided in this section, the~~ The city auditor, park district treasurer, or business manager of the school district or similarly acting officer of the respective ~~city, park district, or school district must be~~ municipality is custodian of each of its sinking funds, unless the governing body by resolution appoints the county treasurer.

SECTION 8. AMENDMENT. Section 40-01-06 of the North Dakota Century Code is amended and reenacted as follows:

40-01-06. Bonds, contracts, and conveyances - How signed and countersigned. All bonds, contracts, and conveyances of a municipality, except as otherwise provided, shall be signed by the executive officer and countersigned by the auditor or clerk, as the case may be~~, who shall affix the seal of the municipality thereto~~.

SECTION 9. REPEAL. Sections 21-03-21.1, 21-03-22, 21-03-31 and 21-03-32 of the North Dakota Century Code are repealed.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 240

HOUSE BILL NO. 1353
(Representative Grosz)

SEED AND FEED BONDS

AN ACT to amend and reenact section 21-03-02 of the North Dakota Century Code, relating to seed and feed bonds; and to repeal chapter 11-29 of the North Dakota Century Code, relating to seed, feed, and fuel loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-02 of the North Dakota Century Code is amended and reenacted as follows:

[1] **21-03-02. Provisions not applicable to certain issues.** This chapter is not applicable:

1. To issue of bonds, warrants, or other forms of public securities issued on account of public improvements and for the payment of which special assessments are or shall be levied upon and against property benefited thereby which do not constitute, at the time of their issuance, a general obligation or fixed liability of the municipality issuing the same, nor the portion of any such issue payable by general taxation on account of assumption of a portion of the cost of such improvement under section 40-24-10 or any similar law. Nothing in this subsection may be construed to prevent the issuance of bonds by any city for the purposes specified in subdivision g of subsection 2 of section 21-03-06.
2. To drainage bonds or irrigation bonds.
3. ~~To refunding of seed and feed bonds under the provisions of sections 11-29-34 to 11-29-38.~~
4. To borrowing of money in anticipation of tax collections by means of certificates of indebtedness, as provided by chapter 21-02.

SECTION 2. REPEAL. Chapter 11-29 of the North Dakota Century Code is repealed.

Approved April 7, 1993
Filed April 8, 1993

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[1] NOTE: Section 21-03-02 was also amended by section 2 of Senate Bill No. 2454, chapter 239.

CHAPTER 241

SENATE BILL NO. 2463
(Senators Grindberg, Lindgren)

SPECIAL ASSESSMENT PREPAYMENT BONDS

AN ACT to create and enact a new subsection to section 21-03-07 of the North Dakota Century Code, relating to the issuance of general obligation bonds to prepay outstanding special assessments against political subdivision property; and to amend and reenact section 57-15-41 of the North Dakota Century Code, relating to the issuance of general obligation bonds to prepay outstanding special assessments against political subdivision property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 21-03-07 of the North Dakota Century Code is created and enacted as follows:

The governing board of any county, city, public school district, park district, or township may by resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the county, city, public school district, park district, or township.

SECTION 2. AMENDMENT. Section 57-15-41 of the North Dakota Century Code is amended and reenacted as follows:

57-15-41. Political subdivision tax levies for payment of special assessments exempt from levy limitations. No tax levy limitations provided by any statute of this state ~~shall~~ apply to tax levies ~~heretofore or hereafter made~~ by any county, city, school district, park district, or township for the purpose of paying any special assessments or paying debt service on bonds issued to prepay special assessments made in accordance with the provisions of title 40, against property owned by such county, city, school district, park district, or township. Any surplus in the special assessment fund after all of the special assessments for which the fund was created have been paid shall be placed in the general fund of the political subdivision.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 242

SENATE BILL NO. 2166
(Political Subdivisions Committee)
(At the request of the Superintendent of Public Instruction)

SINKING FUND SURPLUS TRANSFER

AN ACT to amend and reenact section 21-03-45 of the North Dakota Century Code, relating to the transfer of surplus funds from a political subdivision's sinking fund to its general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-45 of the North Dakota Century Code is amended and reenacted as follows:

21-03-45. Sinking fund - Surplus placed in general fund. Any surplus in a sinking fund after all of the bonds for the payment of which the fund was created have been paid and canceled and after all investments of the second and third class finally have been disposed of or realized upon, must, within two years, be placed in the general fund of the municipal treasury.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 243

SENATE BILL NO. 2423
(Senators Heinrich, Evanson, Nalewaja, Kelly)
(Representatives Ring, Nelson)

PUBLIC FUNDS FOR NONPROFIT EDUCATION

AN ACT to create and enact a new section to chapter 21-06 of the North Dakota Century Code, relating to the use of property for nonprofit education foundations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 21-06 of the North Dakota Century Code is created and enacted as follows:

Use of public funds or property for nonprofit education foundations - Public purposes. Any school district established under chapter 15-47 or a board of education established under chapter 15-51 may provide use of public property or in-kind services of personnel to participate in the creation and administration of nonprofit public school education foundations, subject to an annual audit, to receive, manage, invest, and distribute funds or property provided to the foundation by private, or nonschool district governmental entities, if such foundations are established to enhance the mission of the school district by providing facilities or services for recognition of staff and students that are not normally available through the funding of the school district, to administer funds received for education scholarships or endowments established by other entities, to encourage elementary, secondary, and postsecondary education, and to assist in raising, adding, investing, and distributing funds and earnings according to guidelines established by the foundation. The records of a foundation are not subject to audit under section 54-10-14.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 244

SENATE BILL NO. 2268
(Senator Lindgren)
(Representative Rydell)

BOND VALIDATION

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to validation of bonds issued by public bodies of the state prior to July 1, 1993.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-09-05 of the North Dakota Century Code is amended and reenacted as follows:

21-09-05. Application of chapter. The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1991~~ 1993.

Approved February 16, 1993
Filed February 16, 1993

CHAPTER 245

HOUSE BILL NO. 1035
(Legislative Council)
(Employee Benefits Programs Committee)

STATE RETIREMENT AND INVESTMENT

AN ACT to amend and reenact subsection 1 of section 21-10-01 of the North Dakota Century Code as amended by section 4 of chapter 667 of the 1989 Session Laws of North Dakota as amended by section 2 of chapter 628 of the 1991 Session Laws of North Dakota, relating to the membership of the state investment board; to repeal section 15 of chapter 667 of the 1989 Session Laws of North Dakota as amended by section 5 of chapter 628 of the 1991 Session Laws of North Dakota and to repeal section 5 of chapter 628 of the 1991 Session Laws of North Dakota, relating to the expiration date of the Act establishing the North Dakota state retirement and investment office; to provide for retroactive application of this Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 21-10-01 of the North Dakota Century Code as amended by section 4 of chapter 667 of the 1989 Session Laws of North Dakota as amended by section 2 of chapter 628 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the director of the workers compensation bureau, the commissioner of insurance, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members of the public employees retirement system board as selected by that board. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials, are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

SECTION 2. REPEAL - RETROACTIVE APPLICATION. Section 15 of chapter 667 of the 1989 Session Laws of North Dakota, as amended by section 5 of chapter 628 of the 1991 Session Laws of North Dakota, and section 5 of chapter 628 of the 1991 Session Laws of North Dakota are repealed. This repeal is retroactive to June 29, 1993.

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

Approved March 15, 1993
Filed March 16, 1993

GUARANTY, INDEMNITY, AND SURETYSHIP

CHAPTER 246

SENATE BILL NO. 2429
(Senators Krebsbach, Keller)
(Representatives Clayburgh, Nelson)

PARTNER AND STOCKHOLDER DEBT GUARANTY

AN ACT to amend and reenact subsection 1 of section 22-01-01, sections 22-01-12, and 45-06-07 of the North Dakota Century Code, relating to the guaranty and enforcement of debt by stockholders and partners of business entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 22-01-01 of the North Dakota Century Code is amended and reenacted as follows:

1. A "continuing guaranty" means a guaranty relating to a future liability of the principal under successive transactions which either continue ~~his~~ the liability or from time to time renew it after it has been satisfied.

SECTION 2. AMENDMENT. Section 22-01-12 of the North Dakota Century Code is amended and reenacted as follows:

22-01-12. Limitations upon obligation of guarantor. The obligation of a guarantor must be neither larger in amount, nor in other respects more burdensome, than that of the principal. A stockholder or partner of any entity, including a limited liability company, business corporation, professional corporation, and partnership, may enter into a separate contract of guaranty for the real estate mortgage debt of the entity. If in its terms the obligation exceeds that of the principal, the obligation is reducible in proportion to the principal obligation.

SECTION 3. AMENDMENT. Section 45-06-07 of the North Dakota Century Code is amended and reenacted as follows:

45-06-07. Nature of partner's liability.

1. All partners are liable:

~~1.~~ a. Jointly and severally for everything chargeable to the partnership under sections 45-06-05 and 45-06-06~~.~~; and

~~2.~~ b. Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

2. A partner is severally liable for a partnership real estate mortgage debt for which that partner has given a separate guaranty to a lender.

Approved March 10, 1993
Filed March 10, 1993

HEALTH AND SAFETY

CHAPTER 247

HOUSE BILL NO. 1373
(Representatives Brodshaug, Dorso, Porter, Ring)
(Senator DeMers)

STATE HEALTH OFFICER

AN ACT to amend and reenact section 23-01-05 of the North Dakota Century Code, relating to the qualifications of the state health officer and the appointment of an advisory committee to the state health officer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05. Health officer - Qualifications, salary, term, duties - Advisory committee. The governor shall appoint the state health officer ~~must be appointed by the governor. He or she must be a physician who has graduated from a regular school of medicine of class A standing,~~ who must have had ~~special~~ post-graduate training or experience in public health administration~~, and who must be duly licensed or eligible for license to practice his profession in North Dakota. In the latter instance he shall obtain a license at the next examination of the state board of medical examiners or disqualify. He shall~~. The state health officer is entitled to receive a salary commensurate with ~~his~~ that person's training ~~or~~ and experience ~~in public health administration, such~~. The governor shall set the salary ~~to be fixed by the health council~~ of the state health officer within the limits of legislative appropriations to the department. ~~He also shall~~ The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business. ~~He~~ The state health officer may not engage in any other occupation or business that may conflict with the statutory duties of the state health officer and ~~shall hold~~ holds office for a term of four years beginning ~~July 1, 1947~~ January 1, 1993. The state health officer is the administrative officer of the state department of health and consolidated laboratories. If the governor does not appoint as state health officer a physician licensed in this state, the governor shall appoint at least three licensed physicians recommended by the state medical association to serve as an advisory committee to the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. The term of the advisory committee coincides with the term of the state health officer. A committee member serves at the pleasure of the governor. The duties of the state health officer are as follows:

1. Enforce all rules and regulations as promulgated by the health council.
2. Hold the several boards of health responsible for the enforcement of state regulations, serve in an advisory capacity to the several boards of health

in the counties, cities, and townships of this state and provide for coordination of health activities.

3. Establish and enforce minimum standards of performance of the work of the local department of health.

4. Study health problems and plan for their solution as may be necessary.

5. Collect, tabulate, and publish vital statistics for each important political or health administrative unit of the state and for the state as a whole.

6. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions subject to the approval of the health council.

7. Collect and distribute health education material.

8. Maintain a central public health laboratory and where necessary, branch laboratories for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.

9. Establish a service for medical hospitals and related institutions to include licensing of such institutions according to the standards promulgated by the health council and consultation service to communities planning the construction of new hospitals and related institutions.

10. Comply with the state merit system policies of personnel administration.

11. Establish a program to provide information to the surviving family of a child whose cause of death is suspected to have been the sudden infant death syndrome.

12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

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

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 248

SENATE BILL NO. 2050
(Legislative Council)
(Interim Waste Management Committee)

WASTE MANAGEMENT FACILITY INSPECTORS

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to employment of waste management facility inspectors by the state department of health and consolidated laboratories; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Department to employ waste management facility inspectors. The state department of health and consolidated laboratories shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23-29-10 and 23-29-11.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislature appropriation.

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

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 249

SENATE BILL NO. 2277
(Senator Lips)

VITAL RECORDS DISCLOSURES

AN ACT to amend and reenact section 23-02.1-27 of the North Dakota Century Code, relating to disclosure of certain vital records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-27. Disclosure of records.

~~1. To protect the integrity of vital records, to ensure their proper use, and to ensure efficient and proper administration of the system of vital records registration, it is unlawful for any person to permit inspection of or to disclose information contained in vital records, or to copy or issue a copy of all or part of any such record except as authorized by regulations.~~

~~2. The state department of health and consolidated laboratories may authorize the disclosure of data contained in vital records for research purposes.~~

~~3.~~ The state registrar, and local registrars, may supervise and regulate physical access to vital records to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of records that are confidential. Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the person to whom the record relates if that person is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating ~~that a birth or fetal death occurred out of wedlock~~ cause of death may not be disclosed except ~~as provided by regulation~~ to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the deceased, or upon order of a court of competent jurisdiction.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 250

HOUSE BILL NO. 1229
(Representatives Soukup, Tollefson, Mahoney)

PRE-NEED FUNERAL CONTRACT PAYMENTS

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, relating to the deposit or transfer of payments made on pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise must be deposited ~~within ten days~~ in or transferred to a trust company or to a federally insured bank, credit union, or savings and loan association~~, or trust company carrying federal deposit insurance and located within the~~ in this state ~~of North Dakota~~, within ten days. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. ~~Such~~ The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. ~~Such~~ The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making ~~such~~ the payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making ~~such~~ the payment.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record ~~thereof~~ of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as

belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within ~~the~~ this state ~~of North Dakota~~.

Any person who willfully violates this section or any rule or order of the commissioner ~~pursuant hereto~~ under this section is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense does not bar a prosecution or conviction for any other offense.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 251

SENATE BILL NO. 2394
(Senators DeMers, Lips, Mathern)
(Representatives Price, Rydell, Kerzman)

TERMINAL ILLNESS DECLARATIONS

AN ACT to create and enact a new section to chapter 23-06.4 of the North Dakota Century Code, relating to conditions for withdrawing, withholding, or administering nutrition or hydration; and to amend and reenact subsections 1 and 3 of section 23-06.4-03, subsection 2 of section 23-06.4-05, section 23-06.4-07, subsections 1 and 4 of section 23-06.4-11, and section 23-06.4-14 of the North Dakota Century Code, relating to declarations concerning life-prolonging treatment and management of qualified patients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-06.4-03 of the North Dakota Century Code is amended and reenacted as follows:

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, nutrition, and hydration. 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.

SECTION 2. AMENDMENT. Subsection 3 of section 23-06.4-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A declaration must be substantially in the following 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 on (month, day, year):

~~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.~~

a. I have made the following decision concerning life-prolonging treatment (initial 1, 2, or 3):

(1) [____] I direct that life-prolonging treatment be withheld or withdrawn and that I be permitted to die naturally if two physicians certify that:

(a) I am in a terminal condition that is an incurable or irreversible condition which, without the administration of life-prolonging treatment, will result in my imminent death;

(b) The application of life-prolonging treatment would serve only to artificially prolong the process of my dying; and

(c) I am not pregnant.

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 that they accept the consequences of that refusal, which is death.

(2) [____] I direct that life-prolonging treatment, which could extend my life, be used if two physicians certify that I am in a terminal condition that is an incurable or irreversible condition which, without the administration of life-prolonging treatment, will result in my imminent death. It is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct that medical or surgical treatment be provided.

(3) [____] I make no statement concerning life-prolonging treatment.

b. I have made the following decision concerning the administration of nutrition when my death is imminent (initial only one statement):

(1) [____] I wish to receive nutrition.

(2) [____] I wish to receive nutrition unless I cannot physically assimilate nutrition, nutrition would be physically harmful or would cause unreasonable physical pain, or nutrition would only prolong the process of my dying.

(3) [____] I do not wish to receive nutrition.

(4) [____] I make no statement concerning the administration of nutrition.

c. I have made the following decision concerning the administration of hydration when my death is imminent (initial only one statement):

(1) [____] I wish to receive hydration.

(2) [____] I wish to receive hydration unless I cannot physically assimilate hydration, hydration would be physically harmful or would cause unreasonable physical pain, or hydration would only prolong the process of my dying.

(3) [____] I do not wish to receive hydration.

(4) [____] I make no statement concerning the administration of hydration.

d. Concerning the administration of nutrition and hydration, I understand that if I make no statement about nutrition or hydration, my attending physician may withhold or withdraw nutrition or hydration if the physician determines that I cannot physically assimilate nutrition or hydration or that nutrition or hydration would be physically harmful or would cause unreasonable physical pain.

~~3.~~ e. 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.~~ f. I understand the ~~full import~~ importance of this declaration, I am voluntarily signing this declaration, I am at least eighteen years of age, and I am emotionally and mentally competent to make this declaration.

~~5.~~ g. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant ~~has been personally~~ is 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 _____~~

SECTION 3. AMENDMENT. Subsection 2 of section 23-06.4-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A revocation is effective upon communication to the attending physician or other health care provider by the declarant ~~or a witness to the revocation~~.

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

Nutrition or hydration - Conditions for withdrawing, withholding, or administering.

1. Nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to a person in a terminal condition in the absence of circumstances or directives described in this section. However, the administration of nutrition or hydration, or both, is presumed to be in the best interests of the patient and nutrition or hydration appropriately administered is not life-prolonging treatment.

2. Nutrition or hydration, or both, must be withdrawn, withheld, or administered if the patient for whom the administration of nutrition or hydration is considered has previously declared in writing the patient's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered.

3. In the absence of a written statement concerning nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the patient or would be physically harmful or would cause unreasonable physical pain to the patient.

SECTION 5. AMENDMENT. Section 23-06.4-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06.4-07. Management of qualified patients.

1. A qualified patient may make decisions regarding life-prolonging treatment as long as the patient is competent.

2. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.

3. ~~This chapter does not affect the responsibility of the attending physician or other health care provider to provide nutrition and hydration. Nutrition and hydration may be withheld from a patient with a terminal condition if the nutrition and hydration could not be physically assimilated by the patient or would be physically harmful or unreasonably painful to the patient.~~

4. ~~.~~ Notwithstanding a declaration executed under this chapter, medical treatment must be provided to a pregnant patient with a terminal condition unless, to a reasonable degree of medical certainty as certified on the patient's medical chart by the attending physician and an obstetrician who has examined the patient, such medical treatment will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the patient or will prolong severe pain that cannot be alleviated by medication.

SECTION 6. AMENDMENT. Subsections 1 and 4 of section 23-06.4-11 of the North Dakota Century Code are amended and reenacted as follows:

1. Death resulting from the withholding or withdrawal of life-prolonging treatment, nutrition, or hydration pursuant to a declaration and in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

4. This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-prolonging treatment, nutrition, or hydration in the event of a terminal condition.

SECTION 7. AMENDMENT. Section 23-06.4-14 of the North Dakota Century Code is amended and reenacted as follows:

23-06.4-14. Effect of previous declaration. An instrument executed before July 10, 1989, which basically complies with the intent of subsection 1 of section 23-06.4-03, must be given effect pursuant to this chapter. ~~A previously executed instrument that purports to comply with the intent of this chapter is valid for five years from July 10, 1989, unless the declarant becomes incompetent within five years after the execution of the declaration and remains incompetent at the time of the determination of a terminal condition under section 23-06.4-04, in which case the declaration continues in effect. When the declaration expires, a new declaration must be executed if the declarant wishes to make a written declaration under this chapter.~~

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 252

SENATE BILL NO. 2417
(Senators DeMers, Lips)
(Representatives Rydell, Kerzman, Price)

HEALTH CARE DURABLE POWER OF ATTORNEY

AN ACT to amend and reenact subsection 8 of section 23-06.5-02, subsection 5 of section 23-06.5-03, sections 23-06.5-07, 23-06.5-10, and 23-06.5-17 of the North Dakota Century Code, relating to durable powers of attorney for health care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 23-06.5-02 of the North Dakota Century Code is amended and reenacted as follows:

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 2. AMENDMENT. Subsection 5 of section 23-06.5-03 of the North Dakota Century Code is amended and reenacted as follows:

5. Nothing in this chapter permits an agent to consent to admission to a mental health facility~~,~~ or 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 3. AMENDMENT. Section 23-06.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-07. Revocation.

1. A durable power of attorney for health care 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; or

   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.

3. If the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

SECTION 4. AMENDMENT. Section 23-06.5-10 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a durable power of attorney for health care 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 or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care. It is the intent of this subsection to recognize that some residents of long-term care facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willingly and voluntarily executing a durable power of attorney for health care.

3. A durable power of attorney for health care is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice in this state signs a statement that the person has explained the nature and effect of the durable power of attorney for health care to the principal or unless the principal acknowledges in writing that the principal has read the explanation prefacing the statutory form in section 23-06.5-17 or a similar written explanation of the nature and effect of a durable power of attorney for health care.

SECTION 5. AMENDMENT. Section 23-06.5-17 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-17. 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~~ that is authorized by the general laws of this state. Before executing this document, you should know these important facts:

You must be at least eighteen years of age ~~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~~ principal 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)

Approved March 26, 1993
Filed March 26, 1993

CHAPTER 253

SENATE BILL NO. 2180
(Education Committee)
(At the request of the Superintendent of Public Instruction)

INNOCULATION OF HOME-BASED STUDENTS

AN ACT to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to innoculation required before admission to school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-07-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. No child may be admitted to any public, private, or parochial school, or day care center, child care facility, headstart program, or nursery school operating in North Dakota or be supervised through home-based instruction unless such child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health and consolidated laboratories that such child has received immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, and poliomyelitis. In the case of a child receiving home-based instruction, the child's parent or legal guardian shall file the certification with the superintendent of public instruction.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 254

HOUSE BILL NO. 1383
(Representatives Svedjan, Rydell, Kerzman, Goffe)
(Senators Traynor, DeMers)

HIV TESTING

AN ACT to create and enact four new subsections to section 23-07.5-01 and six new subsections to section 23-07.5-02 of the North Dakota Century Code, relating to testing for the human immunodeficiency virus.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Four new subsections to section 23-07.5-01 of the North Dakota Century Code are created and enacted as follows:

"Emergency medical services provider" means a firefighter, peace officer, or other person trained and authorized by law or rule to render emergency medical assistance or treatment.

"Personal physician" means the physician designated by a patient as the patient's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

"Significant exposure" means:

a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;

b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

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

"Universal precautions" means measures that a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1, takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in health care settings.

SECTION 2. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and

who has had a significant exposure with the patient may subject the patient's blood to a test for the presence of the human immunodeficiency virus, without the patient's consent, if all of the following apply:

a. A sample of the patient's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. The patient's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The patient is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the patient is informed, while competent and conscious, that the patient's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the patient without the patient's consent, except to the individual who has had a significant exposure; that if the individual who has had a significant exposure knows the identity of the patient, that individual may not disclose the identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's identity. A person who discloses the identity of a patient under this Act is guilty of a class C felony. Each individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's understanding that the individual may not disclose the information and that disclosing the information constitutes a class C felony.

SECTION 3. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:

a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The provider is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the provider without the provider's consent, except to the patient who has had a significant exposure; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. A person who discloses the identity of the provider or otherwise breaches the confidentiality requirements of this subsection is guilty of a class C felony. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that patient's understanding that the patient may not disclose the information and that disclosing the information constitutes a class C felony.

SECTION 4. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, testing for the presence of any contagious disease must be conducted.

SECTION 5. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

Any testing done pursuant to section 2, 3, or 4 of this Act may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of section 2 or subdivision b of section 3 of this Act, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;

b. The court finds clear and imminent danger to the public health or the health of the person petitioning for the testing and the person has demonstrated a compelling need for the test which cannot be accommodated by other means;

c. The petition substitutes a pseudonym for the true name of the person to be tested;

d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 6. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A person may request two tests after a significant exposure. The first test may be requested within ten days after a significant exposure, and the second test may be requested not earlier than five months, nor later than six months, after a significant exposure. The tested person must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.

SECTION 7. A new subsection to section 23-07.5-02 of the North Dakota Century Code is created and enacted as follows:

A health care provider who subjects a patient to a significant exposure must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employer guidelines that the provider may be subject. The knowing failure to inform a patient of a significant exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 255

SENATE BILL NO. 2285
(Senators Wogsland, DeMers, Freborg)
(Representatives Cleary, Rydell, Svedjan)

AIDS TESTING DEFENDANTS

AN ACT to provide for the medical testing of a sex offense defendant for sexually transmitted diseases and the human immunodeficiency virus; to create and enact a new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to disclosure of test results; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Court-ordered sexual offense medical testing. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 or an alleged juvenile offender with respect to when a petition has been filed in a juvenile court alleging violation of section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician. The physicians for the defendant or alleged juvenile offender and requesting victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

SECTION 2. Testing procedures - Results of test - Penalty.

1. If testing is ordered by a court under section 1 of this Act, only a health care provider, blood bank, blood center, or plasma center may obtain a specimen of bodily fluids or tissues for the purpose of testing.

2. The court shall order that the specimen be transmitted to a licensed medical laboratory and that tests be conducted for medically accepted indications of exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, and

sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.

3. Notwithstanding section 23-07.5-03, the laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health and consolidated laboratories.

4. Every copy of the test results must include the following disclaimer:

   The testing was conducted in a medically approved manner, but tests cannot determine exposure to or infection by acquired immunodeficiency syndrome or other sexually transmitted diseases with absolute accuracy. Anyone receiving this test result should continue to monitor their own health and should consult a physician as appropriate.

5. The court shall order all persons, other than the test subject, who receive test results pursuant to section 1 of this Act, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice. A person who intentionally discloses the results of any test in violation of this subsection and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.

6. The specimens and the results of tests ordered pursuant to section 1 of this Act are not admissible evidence in any civil, criminal, or juvenile proceeding.

7. Any person who performs testing, transmits test results, or discloses information pursuant to this Act is immune from civil liability for any action undertaken in accordance with this Act, except for an act or omission that constitutes gross negligence.

8. The county in which the alleged violation of chapter 12.1-20 occurred shall pay for the testing. A defendant who is convicted of the offense shall reimburse the county for the costs of testing.

SECTION 3. A new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code is created and enacted as follows:

A person who receives test results under section 2 of this Act.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 256

HOUSE BILL NO. 1031
(Legislative Council)
(Interim Budget Committee on Long-Term Care)

BASIC CARE FACILITY ADMISSIONS

AN ACT to create and enact a new section to chapter 23-09.3 of the North Dakota Century Code, relating to admission of individuals to basic care facilities; and to amend and reenact section 23-09.3-01 of the North Dakota Century Code, relating to definitions concerning basic care facilites.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.3-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-09.3-01. ~~Basic care facility -- Defined~~** Definitions. As used in this chapter~~, the term "basic~~:

1. "Basic care facility" means ~~any place~~ a residence, not licensed under chapter 23-16 by the department ~~of health and consolidated laboratories, hereinafter referred to as the department, under chapter 23-16, operated by any person, institution, organization, or private or public corporation, in which~~, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the ~~place, are received, kept, and provided with food, shelter, and care for hire or compensation. Care for hire or compensation to assist residents with functional impairments includes routine maintenance and supportive care with activities of daily living and instrumental activities of daily living which need not be provided in an institutional setting by trained and skilled medical personnel, can be administered without any possible harm to the health of the individual in care, and has no significant relationship to medical care of any type. Any place that assists its residents with walking, dressing, or toilet usage, or which promotes supervision of person, or which employs any staff to aid residents in addition to cooks or maids for cleaning, is considered to be a basic care facility subject to regulation by the department~~ residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services.

2. "Department" means the department of health and consolidated laboratories.

3. "Services" includes responsibility for resident health and safety, assistance with activities of daily living and instrumental activities of

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[1] NOTE: Section 23-09.3-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

daily living, provision of leisure, recreational, and therapeutic activities, supervision of nutritional needs, and medication administration.

SECTION 2. A new section to chapter 23-09.3 of the North Dakota Century Code is created and enacted as follows:

Admission of residents to basic care facility - Restrictions. A basic care facility may admit and retain only an individual for whom the facility provides, directly or through contract, appropriate services within the facility to attain or maintain the individual at the individual's highest practicable level of functioning. A basic care facility may admit or retain only an individual whose condition and abilities are consistent with the National Fire Protection Association 101 Life Safety Code requirements.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 257

SENATE BILL NO. 2457
(Senator Schoenwald)

HOUSING AUTHORITY COMMISSIONERS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

23-11-05. Commissioners of authority - Appointment, qualifications, tenure, compensation. When the governing body of a city adopts a resolution, declaring there is need for a housing authority, it promptly shall notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for said city. When the governing body of a county adopts a resolution declaring there is need for a housing authority, said body shall appoint five persons as commissioners of the authority created for said county. The commissioners who are first appointed must be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, and thereafter, each commissioner must be appointed for a term of office of five years except that all vacancies must be filled for the unexpired term. ~~No commissioner of an authority may be an officer or employee of the city or county for which the authority is created.~~ A commissioner shall hold office until ~~his~~ a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner must be filed with the auditor of the city or county, as the case may be, and such certificate is conclusive evidence of the due and proper appointment of such commissioner. A commissioner may receive ten dollars a day for each day necessarily devoted to the work of ~~his~~ the office and ~~he~~ is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of ~~his~~ those duties. The per diem compensation provided for in this section may not exceed three hundred dollars in any one fiscal year.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 258

HOUSE BILL NO. 1240
(Representatives Gorman, Hagle, Mahoney)
(Senators Freborg, Graba, Mushik)

HOUSING AUTHORITY CERTIFICATES AND VOUCHERS

AN ACT to create and enact a new subsection to section 23-11-11 of the North Dakota Century Code, relating to the powers of housing authorities; and to amend and reenact section 54-17-07.6 of the North Dakota Century Code, relating to the acceptance of grants, contributions, loans, and other aid by the state housing finance agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-11-11 of the North Dakota Century Code is created and enacted as follows:

To exercise within its area of operation the authority granted to the industrial commission under section 54-17-07.6.

SECTION 2. AMENDMENT. Section 54-17-07.6 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07.6. Acceptance of grants, contributions, loans, or other aid. Acting in its capacity as a state housing finance agency, the industrial commission ~~is authorized to~~ may contract for, accept, and administer any grant, contribution, or loan of funds, property, or other aid in any form from the federal government or from any other source, and ~~to~~ may do all things necessary to qualify for any grant, contribution, or loan under any federal program, including those things necessary to qualify for assistance under the federal housing programs in effect from time to time. A housing authority established under chapter 23-11 which elects to exercise the authority granted to the industrial commission under this section preempts the industrial commission from acting with regard to housing certificates and vouchers within the area of operation of that housing authority. A local housing authority may elect to exercise the authority granted to the industrial commission under this section only within two years of the effective date of this Act. For transition of housing certificates and vouchers, a local housing authority that elects to exercise the authority granted to the industrial commission and that would administer three hundred or more units of certificates and vouchers administered by the industrial commission shall agree to accept a rate of seventy percent of the total contract administrative fees for the affected certificates and vouchers for two years of the effective date of this Act or until all local housing authorities in the state have entered into the administration of their certificates and vouchers, whichever is sooner. The remaining thirty percent of the fees remain with the industrial commission until that time to assure the provision of housing services to rural areas until local administration is implemented.

Approved April 2, 1993
Filed April 2, 1993

CHAPTER 259

HOUSE BILL NO. 1246
(Representatives Kretschmar, Wentz)

CHILD CARE FACILITY SMOKING BAN

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to prohibiting smoking in child care facilities; and to amend and reenact section 23-12-10 of the North Dakota Century Code, relating to designation of smoking areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23-12-10. Designation of smoking areas. ~~Every place of public assembly is an area where smoking~~ Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas ~~must~~ may be designated ~~by the proprietor or other person with~~ only by proprietors of privately owned buildings or by public officials having general supervisory responsibility ~~over the place of public assembly, except~~ for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal~~, by other governing law, rule, or ordinance, or by corporate or private policy~~. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

SECTION 2. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Smoking prohibited in certain facilities. Smoking is not permitted in an early childhood facility at any time during which a child who receives early childhood services from that facility is present and receiving services at that facility.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 260

SENATE BILL NO. 2315
(Senators DeMers, Mushik, Lips)
(Representatives Kerzman, Price, Rydell)

HEALTH CARE INFORMED CONSENT

AN ACT to amend and reenact section 23-12-13 and subsection 2 of section 30.1-28-12 of the North Dakota Century Code, relating to persons authorized to provide informed consent to health care for incapacitated persons and the general powers of a guardian.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-13 of the North Dakota Century Code is amended and reenacted as follows:

23-12-13. 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 who has maintained significant contacts with the incapacitated person;

   d. Children of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person;

   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 who have maintained significant contacts with the incapacitated person;

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 is at least eighteen years of age and 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.

5. If a patient who is determined by a physician to be an incapacitated person, or a person interested in the patient's welfare, objects to a determination of incapacity made pursuant to this section, a court hearing pursuant to chapter 30.1-28 must be held to determine the issue of incapacity.

SECTION 2. AMENDMENT. Subsection 2 of section 30.1-28-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. To the extent that it is consistent with the terms of an order by a court of competent jurisdiction, the guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility~~,~~ or state institution~~, or secured unit of a long-term care facility~~ for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subdivision, the guardian may readmit a ward to a mental health facility~~,~~ or a state institution~~, or secured unit of a long-term care facility~~ within sixty days of discharge from that institution, if the original admission to the facility~~,~~ or institution~~, or unit~~ had been authorized by the court.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 261

HOUSE BILL NO. 1027
(Legislative Council)
(Interim Budget Committee on Human Services)

ADA COMPLIANCE

AN ACT to provide for accessibility standards for buildings and facilities subject to the federal Americans with Disabilities Act of 1990 and to require notice of application of federal accessibility guidelines to construction projects; to amend and reenact section 23-13-04, subsection 9 of section 39-01-15, and section 48-02-19 of the North Dakota Century Code, relating to doors and parking spaces and compliance with Americans with Disabilities Act guidelines; and to repeal sections 23-13-12, 23-13-13, and 40-31-01.1 of the North Dakota Century Code, relating to toilet stalls, toilet rooms, and ramped curbing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-04 of the North Dakota Century Code is amended and reenacted as follows:

23-13-04. Doors of public buildings - Construction. All doors of ingress and egress in all schoolhouses and churches within the limits of any city and in all other buildings used for public assemblages of any character in this state, including theaters, public halls, city halls, courthouses, factories, hotels, and all other public buildings wherein numbers of persons are employed or are in the habit of meeting together for any purpose, must be so constructed as to conform with the requirements of the state building code as provided in chapter 54-21.3 and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36].

[1] **SECTION 2. AMENDMENT.** Subsection 9 of section 39-01-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. Whenever any public or private entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces must comply with the requirements of ~~American National Standards A117.1-1986~~ the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired. The sign must indicate that unauthorized use of the

[1] NOTE: Section 39-01-15 was also amended by section 1 of Senate Bill No. 2130, chapter 376.

space is a nonmoving violation for which a fee of one hundred dollars must be imposed. For particular events, a public or a private entity may reserve additional parking spaces for use by motor vehicles operated by mobility-impaired persons. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.

SECTION 3. AMENDMENT. Section 48-02-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-19. Public buildings and facilities ~~to be usable by physically disabled -- Access requirements~~ - Statement of compliance with accessibility guidelines. ~~All public buildings and facilities constructed, in whole or in part, from funds of the state or of its political subdivisions and buildings leased by state agencies, departments, or institutions must be accessible to, and usable by, the physically disabled in accordance with this section by July 1, 1981, with the following exceptions: (1) institutions under the supervision and control of the board of higher education must be constructed or remodeled so as to make all programs offered therein accessible as required in this section by July 1, 1996; and (2) areas, offices, or levels of public buildings not used for activities open to members of the general public. In meeting the requirements of this section, full consideration must be given to the uniform federal accessibility standards. Governing~~ State agencies and governing bodies of political subdivisions shall require a statement from ~~the~~ any person ~~or persons~~ preparing the plans and specifications for ~~the~~ a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with ~~this section~~ the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 4 of this Act. ~~Adequate space for the physically disabled to park automobiles near the facility without the necessity of crossing a street to reach the facility must be provided. All parking spaces reserved for use by motor vehicles operated by or for physically disabled persons must be designated by blue paint on the curb or edge of the paved portion of the parking space, as provided in section 39-01-15. All city curbs and crosswalks at principal intersections in the vicinity of public buildings must be made usable to persons in wheelchairs.~~

SECTION 4. Accessibility standards. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirements that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section 4.1.6(1)(k)(i) in the Americans with Disabilties Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under

Public Law 101-336. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the office of intergovernmental assistance for recording.

SECTION 5. Notice of federal accessibility guidelines required. A building permit issued under section 11-33-18, subsection 6 of section 40-05-02, or other similar grant of authority must contain the following statement:

> Federal law may require this construction project to conform with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities.

SECTION 6. REPEAL. Sections 23-13-12, 23-13-13, and 40-31-01.1 of the North Dakota Century Code are repealed.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 262

SENATE BILL NO. 2164
(Human Services Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

STATE HOSPITAL LICENSURE

AN ACT to amend and reenact section 23-16-01 of the North Dakota Century Code, relating to licensure requirements for the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-16-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-16-01. Licensure of medical hospitals and state hospitals.** After July 1, 1947, no person, partnership, association, corporation, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment or care of two or more nonrelated persons suffering from illness, injury, or deformity, or where obstetrical or other care is rendered over a period exceeding twenty-four hours may be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Chiropractic hospitals, sanatoriums, and hospitals such as those for unmarried mothers maintained and operated by the department of human services are not required to obtain a license under this chapter. ~~In the case of hospitals maintained and operated by the state, the state department of health and consolidated laboratories has the responsibility of inspecting, rendering consultation service, and making recommendations on phases of hospital administration covered in the standards promulgated by the health council. The state hospital located at Jamestown may also obtain an annual license from the state department of health and consolidated laboratories as provided for in sections 23-16-02 and 23-16-03.~~

In the case of emergency or transfer beds attached to and forming a part of a licensed medical doctor's office, the state department of health and consolidated laboratories has the right of inspection, but no license may be required under the provisions of this chapter when the number of such beds does not exceed four.

Approved March 16, 1993
Filed March 16, 1993

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[1] NOTE: Section 23-16-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 263

SENATE BILL NO. 2295
(Senators Nalewaja, Lindaas, Solberg)
(Representatives Mahoney, Rydell, Svedjan)

HEALTH CARE PROVIDER COOPERATIVE AGREEMENTS

AN ACT relating to cooperative agreements between health care providers; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Cooperative agreement" means an agreement among two or more health care providers or third-party payers for the sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by health care providers.

2. "Department" means the department of health and consolidated laboratories.

3. "Health care facility" means a facility licensed in this state as a hospital, nursing home, community-based residential care facility, mental health center, or sanatorium.

4. "Health care provider" means any person licensed, registered, permitted, or certified by the department of health and consolidated laboratories to provide health care services in this state.

5. "Third-party payer" means any insurer or other entity responsible for providing payment for health care services, including the workers compensation bureau, the comprehensive health association of North Dakota, and any self-insured entity.

SECTION 2. Application for cooperative agreements - Departmental review. A health care provider may negotiate a cooperative agreement with another health care provider or third-party payer if the likely benefits resulting from the agreement outweigh the disadvantages attributable to a reduction in competition that may result from the agreement. The parties to a cooperative agreement may apply to the department for a certificate of public advantage governing the agreement. The application must include an executed copy of the cooperative agreement and must describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. The applicants shall file a copy of the application and related materials with the attorney general and the department. The department shall review the application and shall hold a public hearing on the application. The department shall grant or deny the application within ninety days of the date of filing of the application. The decision must be in writing and must set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor. Directors, trustees, or their representatives of a health care provider

or third-party payer who participate in the discussion or negotiation are immune from civil actions or criminal prosecution for a violation of state or federal antitrust laws, unless the discussion or negotiation exceeds the scope authorized in this section.

SECTION 3. Standards for certification. The department shall issue a certificate of public advantage for cooperative agreement if the department determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits to health care consumers resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. The department shall consult with the attorney general regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

1. In evaluating the potential benefits of a cooperative agreement to health care consumers, the department shall consider whether any of the following benefits may result from the cooperative agreement:

   a. Enhancement of the quality of health care services provided to residents of this state;

   b. Preservation of health care facilities in geographical proximity to the communities traditionally served by those facilities;

   c. Gains in the cost efficiency of services provided by the parties involved;

   d. Improvements in the utilization of health care resources and equipment; and

   e. Avoidance of duplication of health care resources.

2. The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include the following factors:

   a. The extent of any likely adverse impact on the bargaining power of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payers in negotiating payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

   b. The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or persons furnishing goods or services to or in competition with providers or third-party payers that is likely to result directly or indirectly from the cooperative agreement;

   c. The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

   d. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits to health care consumers over disadvantages attributable to any reduction in competition likely to result from the agreement.

SECTION 4. Certificate termination. The department may, after notice and hearing, terminate a certificate of public advantage if the department determines that:

1. The likely or actual benefits to health care consumers that result from a certified agreement no longer outweigh the disadvantages attributable to a potential reduction in competition resulting from the agreement; or

2. Performance by the parties under the certified agreement does not conform to the representations made by the parties in the application or to the provisions of any conditions attached to the certificate of public advantage by the department at the time the application was granted.

SECTION 5. Records. The department shall maintain all cooperative agreements for which the certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty days after termination.

SECTION 6. Investigation by attorney general. The attorney general, at any time after an application is filed under section 2 of this Act, may require by subpoena the attendance and testimony of witnesses and the production of documents in the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 3 of this Act. The attorney general may seek an order from the district court compelling compliance with a subpoena issued under this section.

SECTION 7. Cooperative agreement enjoined - Automatic stay - Standards for adjudication. The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate, but the action must be brought no later than forty days following the department's approval of an application for certificate of public advantage. Upon the filing of the complaint, the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case. In any action, the applicants for a certificate bear the burden of establishing by clear and convincing evidence that the likely benefits to health care consumers which result from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. The court shall review whether the agreement constitutes an unreasonable restraint of trade under state or federal law in assessing disadvantages attributable to a reduction in competition likely to result from the agreement.

SECTION 8. Cancellation of a certificate of public advantage. If, at any time following the forty-day period specified in section 7 of this Act, the attorney general determines that, as a result of changed circumstances, the benefits to health care consumers which result from a certified agreement no longer outweigh the disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in district court seeking to cancel the certificate of public advantage. In an action brought under this section, the attorney general has the burden of establishing by a preponderance of the evidence

that, as a result of changed circumstances, the benefits to health care consumers which result from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement. If the attorney general first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits to health care consumers which result from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

SECTION 9. Resolution by consent decree - Attorney fees. The district court may resolve any action brought by the attorney general under section 7 or 8 of this Act by entering an order that, with the consent of the parties, modifies the cooperative agreement. Upon the entry of the order, the parties to the cooperative agreement have the protection specified in section 10 of this Act and the cooperative agreement has the effectiveness specified in section 10 of this Act. If the attorney general prevails in an action under section 6, 7, or 8 of this Act, the attorney general is entitled to an award of the reasonable costs of the investigation or litigation and reasonable attorney fees, expert witness fees, and court costs incurred in litigation.

SECTION 10. Effective certification - Validity - Application. A cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. If the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating a cooperative agreement is lawful conduct. This section does not immunize any person for conduct in negotiating a cooperative agreement for which an application for a certificate of public advantage is not filed. If the department or the district court determines that the applicants have not established by clear and convincing evidence that the likely benefits to health care consumers which result from a cooperative agreement outweigh any disadvantage attributable to a potential reduction in competition resulting from the agreement, the agreement is invalid and has no force or effect. This section does not exempt hospitals or other health care providers from compliance with laws governing hospital cost reimbursement. This Act does not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals. Notwithstanding any provisions to the contrary, any improvements, construction, expansion, or acquisition of health care equipment or services approved as a condition of a cooperative agreement is not subject to laws governing certificate of need.

SECTION 11. Assessment - Health care cooperative agreement fund. The department shall establish an assessment to be paid by each party to a cooperative agreement. The aggregate amount of the assessment for a cooperative agreement may not exceed forty thousand dollars. The parties shall pay the assessment to the department when the application for the cooperative agreement is submitted to the department. The department shall deposit the moneys received under this section in the health care cooperative agreement fund of the state treasury.

SECTION 12. APPROPRIATION. There is hereby appropriated out of any moneys in the health care cooperative agreement fund, not otherwise appropriated, such amounts

as may be necessary to the department of health and consolidated laboratories for administering the cooperative agreements between health care providers and for reimbursement to the attorney general for expenses incurred for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 264

SENATE BILL NO. 2346
(Senators Mathern, Scherber)
(Representatives Porter, Ring)

WASTE MANAGEMENT PERMIT APPLICATIONS

AN ACT to create and enact a new section to chapter 23-20.3 and a new section to chapter 23-29 of the North Dakota Century Code, relating to the disclosure of certain violations of the law by applicants for waste management facility permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-20.3 of the North Dakota Century Code is created and enacted as follows:

Disclosure of information before issuance, renewal, transfer, or major modification of permit. Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws

of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

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

Disclosure of information before issuance, renewal, transfer, or major modification of permit. Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of solid waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

Approved March 11, 1993
Filed March 11, 1993

CHAPTER 265

HOUSE BILL NO. 1116
(Human Services Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

POLLUTION RULES AND ASBESTOS ABATEMENT

AN ACT to create and enact a new subsection to section 23-25-03 of the North Dakota Century Code, relating to air pollution prevention rules; and to amend and reenact subsection 7 of section 23-25-01 and section 23-25-03.1 of the North Dakota Century Code, relating to asbestos workers and licensing of asbestos contractors and certification of asbestos workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 7 of section 23-25-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Asbestos worker" means ~~an employee or agent of an asbestos contractor, or a public employee~~ any person engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.

SECTION 2. A new subsection to section 23-25-03 of the North Dakota Century Code is created and enacted as follows:

Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The department shall develop and implement such federal programs if the department determines there is a benefit to the state.

SECTION 3. AMENDMENT. Section 23-25-03.1 of the North Dakota Century Code is amended and reenacted as follows:

23-25-03.1. Licensing of asbestos contractors~~,~~ and certification of ~~their~~ asbestos workers~~, and certification of public employees engaged in asbestos abatement~~. The department is charged with the responsibility of administering and enforcing a licensing program for asbestos contractors, and a certification program

[1] NOTE: Section 23-25-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

for ~~their~~ asbestos workers ~~and for public employees engaged in asbestos abatement,~~ and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos workers ~~and public employees performing asbestos abatement~~.

2. To establish standards and procedures for the licensing of contractors, and the certification of ~~their~~ asbestos workers ~~and of public employees,~~ engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and to establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act ~~[42 U.S.C. 1868]~~, as amended.

3. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.

4. To establish an annual fee and renewal fees for licensing asbestos contractors and certifying ~~their~~ asbestos workers and to establish examination fees for asbestos workers ~~and public employees engaged in asbestos abatement~~ under section 23-25-04.2.

5. To establish indoor environmental nonoccupational air quality standards for asbestos.

6. To adopt and enforce rules as necessary for the implementation of this section.

~~The requirements of this section apply only to asbestos abatement conducted in buildings including, but not limited to, schools, government facilities, medical facilities, public buildings, residential buildings, motels, hotels, restaurants, or other commercial buildings, and any other buildings to which the public has unguided access or for which employee protection is not provided under the Federal Occupational Safety and Health Act.~~ For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the Federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the Federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 266

SENATE BILL NO. 2160
(Natural Resources Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

STATEWIDE COORDINATING COMMITTEE DUTIES

AN ACT to amend and reenact section 23-29-06.4 of the North Dakota Century Code, relating to the statewide coordinating committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-06.4 of the North Dakota Century Code is amended and reenacted as follows:

23-29-06.4. 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~~ coordinate solid waste management between the districts and the state agencies and coordinate development, implementation, and revision of district solid waste management plans and the state plan to resolve conflict, achieve consistency, and assure adequate and appropriate solid waste management capacity.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 267

HOUSE BILL NO. 1445
(Representatives Gulleson, Ness, Ring)
(Senator Kelsh)

SOLID WASTE MANAGEMENT FACILITY PERMITS

AN ACT to amend and reenact section 23-29-07 of the North Dakota Century Code, relating to solid waste management facility permit conditions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-07 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07. Permits.** The department ~~is hereby authorized to~~ may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All ~~such~~ permits are nontransferable and are for a term of not more than five years from the date of issuance. All ~~such~~ permits ~~so issued~~ are conditioned upon the observance of the laws of the state and the rules ~~and regulations~~ authorized herein.

Approved April 2, 1993
Filed April 2, 1993

[1] NOTE: Section 23-29-07 was also amended by section 6 of House Bill No. 1057, chapter 111, and by section 15 of House Bill No. 1005, chapter 5.

CHAPTER 268

SENATE BILL NO. 2386
(Senators Graba, B. Stenehjem)
(Representative Glassheim)

SOLID WASTE SURCHARGE REPORTS

AN ACT to amend and reenact section 23-29-07.4 of the North Dakota Century Code, relating to collection of the solid waste management surcharge.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-07.4 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07.4. 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 23-29-07.3. 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 sections 23-29-07.2 through 23-29-07.5, govern the administration of the surcharge imposed under section 23-29-07.3. If a surcharge is assessed, but not collected during the quarter in which the surcharge was assessed, the person or political subdivision responsible for collecting and reporting the surcharge is not required to report the surcharge to the tax commissioner until the end of the quarter in which the surcharge is actually collected. 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.

Approved March 10, 1993
Filed March 10, 1993

[1] NOTE: Section 23-29-07.4 was also amended by section 1 of Senate Bill No. 2293, chapter 269.

CHAPTER 269

SENATE BILL NO. 2293
(Senator Dotzenrod)

TAX ADMINISTRATION CHANGES

AN ACT to amend and reenact sections 23-29-07.4, 57-38-09.1, subsection 5 of section 57-38-30.3, sections 57-38-60, 57-38-61, subsections 1, 2, 5, and 8 of section 57-38.4-01, and subsection 1 of section 57-38.4-02 of the North Dakota Century Code, relating to reporting requirements for collection of the solid waste management surcharge, filing requirements for tax-exempt organizations, the definition of federal income tax liability for the simplified optional method of computing tax, the filing requirements for income withholding returns and wage information returns, penalties for failure to file wage information returns, federalizing the due date for employers' annual returns, applying the provisions for failing to complete returns or supply information to income withholding tax, definitions for water's edge elections, and requirements for using the water's edge method; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-07.4 of the North Dakota Century Code is amended and reenacted as follows:

[1] **23-29-07.4. 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 23-29-07.3. 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 sections 23-29-07.2 through 23-29-07.5,~~ govern the administration of the surcharge imposed under section 23-29-07.3. 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 2. AMENDMENT. Section 57-38-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-09.1. Organizations exempt from income tax - File return. Any organization exempt from taxation pursuant to section 57-38-09 must ~~file a return with~~ provide the tax commissioner, in such form and manner as may be prescribed by the tax commissioner ~~containing such~~, information as is necessary to enable ~~him~~ the

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[1] NOTE: Section 23-29-07.4 was also amended by section 1 of Senate Bill No. 2386, chapter 268.

tax commissioner to determine the exempt status of the organization. ~~Returns made on the basis of the calendar year shall be filed on or before the fifteenth day of May following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the fifteenth day of the fifth month following the close of the fiscal year. The return shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be made shall contain or be verified by a written declaration that it is made under the penalties of perjury.~~

SECTION 3. AMENDMENT. Subsection 5 of section 57-38-30.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. For the purposes of this section, the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables, tax rate schedules, or form 8615, plus additional taxes due on federal income tax schedules or forms 4970, 4972, section 72(m)(5) penalty tax, 5329, 6251, and 8656, less any credit for prior year minimum tax (form 8801), and before credit for the elderly or the disabled (schedule R), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), general business credit (form 3800), jobs credit (form 5884), credit for alcohol used as fuel (form 6478), credit for increasing research activities (form 6765), low-income housing credit (form 8586) and nonconventional fuel credit, and before reduction for federal income tax withheld, estimated payments, earned income credit, amount paid with form 4868, excess social security tax, and the federal Railroad Retirement Tax Act, tax withheld, credit for federal tax on gasoline and special fuels (form 4136), and regulated investment company credits (form 2439). The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 or form 8656 must be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251 or form 8656.

SECTION 4. AMENDMENT. Section 57-38-60 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-60. Employer's returns and remittances.

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under section 57-38-59; provided, that the tax commissioner may alter the time or period for making reports and payment when in the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

2. Every employer shall file a return on forms prescribed by the tax commissioner with each payment made to the tax commissioner under this section which shall show the total amount of wages paid to employees, the

amount of federal income tax deducted and withheld during the period covered by the return, the amount of tax imposed under this chapter which was deducted and withheld during the period covered by the return, and such other information as the tax commissioner may require.

3. Every employer required to withhold state income tax shall make an annual return to the tax commissioner on forms provided and approved by the tax commissioner, summarizing the total compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld~~, for each employee~~ during the calendar year ~~and shall file the same with the tax commissioner on or before the thirty first day of January of the year following that for which the report is made. Every employer shall also, in accordance with such rules as may be prescribed by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for such employee during the preceding calendar year in accordance with section 57-38-59, and said statement shall be made available to the employee on or before the thirty first day of January of the year following that for which the report is made~~. The annual return must be accompanied by a statement of the compensation paid, the federal income tax deducted and withheld, and the state income tax deducted and withheld for each employee. The annual return and accompanying statements must be filed with the tax commissioner on or before the due date for filing similar returns with the internal revenue service.

4. Every employer not required to withhold state income tax shall provide to the tax commissioner a statement of the compensation paid, and the federal income tax deducted and withheld for each employee. The statement must be filed on or before the due date for filing similar returns with the internal revenue service.

5. In case of failure to timely file an information statement as required by subsections 3 and 4, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars.

6. Every employer shall also, in accordance with rules adopted by the tax commissioner, provide each employee from whom state income tax has been withheld, with a statement of the amounts of total compensation paid and the amounts deducted and withheld for the employee during the preceding calendar year in accordance with section 57-38-59. The statement must be made available to the employee on or before January thirty-first of the year following that for which the report is made.

7. The employer shall be liable to the tax commissioner for the payment of the tax required to be deducted and withheld under section 57-38-59, and the employee shall not thereafter be liable for the amount of any such payment, nor shall the employer be liable to any person or to any employee for the amount of any such payment. For the purpose of making penalty provisions of this chapter applicable, any amount deducted or required to be deducted and remitted to the tax commissioner under this section shall be considered to be the tax of the employer and with respect to such amounts the employer is considered the taxpayer.

~~5.~~ 8. Every employer who deducts and withholds any amounts under section 57-38-59 shall hold the same in trust for the state of North Dakota for payment thereof to the tax commissioner in the manner and at the time provided for in this section, and the state of North Dakota shall have a lien on the property of the employer to secure the payment of any amounts withheld and not remitted as provided herein, which lien shall attach at the time prescribed and to the property described in section 57-38-48 and shall be subject to the provisions of sections 57-38-49, 57-38-50, and 57-38-51.

~~6.~~ 9. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required, to either make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages.

~~7.~~ 10. An employer is not subject to this section or section 57-38-59 for wages paid to any employee solely for agricultural labor, as defined in section 3121(g) of the Internal Revenue Code [26 U.S.C. 3121(g)].

SECTION 5. AMENDMENT. Section 57-38-61 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-61. Provisions of chapter applicable. The provisions of sections 57-38-33, 57-38-34, 57-38-38, 57-38-39, 57-38-40, 57-38-44, 57-38-45, 57-38-46, 57-38-47, 57-38-53, 57-38-54, 57-38-55, 57-38-56, and 57-38-57 shall, insofar as consistent therewith, govern the administration of sections 57-38-59, 57-38-60, and 57-38-60.1. The term "employer" as used in sections 57-38-59, 57-38-60, and 57-38-60.1 also means "taxpayer" as used in this chapter. In addition, the authority of the tax commissioner to adopt rules includes the authority to make such agreements with the United States government or any of its agencies as are necessary to provide for the deducting and withholding of tax from the wages of federal employees in this state.

SECTION 6. AMENDMENT. Subsections 1, 2, 5, and 8 of section 57-38.4-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the water's edge ~~combined~~ group.

2. "Domestic disclosure spreadsheet" means a spreadsheet that fully discloses the income reported to each state, the state tax liability, the method used for apportioning or allocating income to the various states, and other information provided for by rules as may be necessary to determine the proper amount of tax due to each state and to identify the water's edge ~~corporate~~ group.

5. "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has ~~less than~~ twenty percent or less of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations inside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.

8. "Water's edge group" includes the following entities:

   a. Any affiliated corporation incorporated in the United States or a possession of the United States, as described in sections 931 through 936 of the Internal Revenue Code. Corporations incorporated in the United States must be eligible to be included in a federal consolidated return and must have more than twenty percent of its property and payroll, as determined by factoring under chapter 57-38.1, assigned to locations inside the fifty states, the District of Columbia, and possessions of the United States. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.

   b. Domestic international sales corporations, as described in sections 991 through 994 of the Internal Revenue Code, and foreign sales corporations, as described in sections 921 through 927 of the Internal Revenue Code.

   c. Export trade corporations, as described in sections 970 through 972 of the Internal Revenue Code.

   d. Foreign corporations deriving gain or loss from a disposition of a United States real property interest to the extent recognized under section 897 of the Internal Revenue Code.

   e. Any corporation incorporated outside the United States if over fifty percent of its voting stock is owned directly or indirectly by ~~the taxpayer~~ an affiliated corporation and if more than twenty percent of the average of its payroll and property is assignable to a location within the United States.

SECTION 7. AMENDMENT. Subsection 1 of section 57-38.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A corporation electing to file using the water's edge method must comply with the following:

   a. The election must be made on the return as originally and timely filed.

b. The corporation may not reduce taxable income for federal taxes ~~paid or accrued as allowed by~~ deducted under subdivision c of subsection 1 of section 57-38-01.3.

c. The water's edge election is binding for five consecutive taxable years after making the election.

d. The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

SECTION 9. EMERGENCY. Section 1 of this Act is declared to be an emergency measure.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 270

SENATE BILL NO. 2214
(Natural Resources Committee)
(At the request of the State Department of Health and Consolidated Laboratories)

MUNICIPAL WASTE LANDFILL RELEASE COMPENSATION

AN ACT to provide for cleanup of leaking municipal waste landfills through the establishment of a municipal waste landfill release compensation fund; to provide a penalty; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. The purpose of this Act is to establish:

1. A municipal waste landfill release compensation fund; and

2. The eligibility requirements for participation in the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment or that a contractor has expended time and materials.

2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term includes the repair of the closure of a municipal waste landfill on which such action occurs.

3. "Department" means the state department of health and consolidated laboratories.

4. "Fund" means the municipal waste landfill release compensation fund.

5. "Operator" means any person in control of, or having responsibility for, the daily operation of a municipal waste landfill under this Act.

6. "Owner" means any person who holds title to, controls, or possesses an interest in the municipal waste landfill before or after the discontinuation of its use.

7. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state municipality, commission, political subdivision, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.

8. "Release" means any unintentional leaking, emitting, discharging, or escaping of leachate from a municipal waste landfill into the environment occurring after the effective date of this Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

SECTION 3. Administration of fund. The department shall administer the fund according to this Act. The department may employ any assistance and staff to administer the fund within the limits of legislative appropriation.

SECTION 4. Adoption of rules. The department shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 5. Release discovery. An owner or operator shall notify the department if it has reason to believe that a release has occurred. The department may require corrective action as provided by subsection 10 of section 23-29-04.

SECTION 6. Owner or operator not identified. The department may initiate legal action to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with section 5 of this Act, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 7. Imminent hazard. Upon receipt of information that a release has occurred which may present an imminent or substantial endangerment of public health or environmental resources, the department may take such emergency action as it determines necessary to protect the public health or the environmental resources.

SECTION 8. Duty to take action. Nothing in this Act limits any person's duty to take action related to a release. However, payment for corrective actions required as a result of a release is governed by this Act. Nothing in this Act limits remediation activities taken or directed by any state or federal agency under other environmental statutues.

SECTION 9. Providing of information. Any person whom the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning wastes placed into a municipal waste landfill, or any person who may have information concerning a release, if requested by the department, must furnish to the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 10. Examination of records. Any employee of the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data which may be related to a release of any person who has a duty to provide information to the department under section 9 of this Act; and

2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any

person who has a duty to provide the information under section 9 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 11. Responsibility for cost. The owner or operator is liable for the cost of corrective action required by the department, including the cost of investigating the releases, and for legal actions of the department regarding the release. This Act does not create any new cause of action for damages on behalf of third parties against the fund.

SECTION 12. Liability avoided. No owner or operator may avoid liability under this chapter or other state environmental law by means of a conveyance of any right, title, or interest in real property or by an indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;

2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or

3. Bar a cause of action by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 13. Other remedies. Nothing in this Act limits the powers of the department, or precludes the pursuit of any administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.

SECTION 14. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any premium fee collected under section 16 of this Act;

2. Any money recovered by the fund under section 21 of this Act, and any money paid under an agreement, stipulation, or settlement;

3. Any interest attributable to investment of money in the fund; and

4. Any money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. Eligibility.

1. Any owner or operator of an active disposal unit which continues disposal of municipal waste after October 9, 1993, at a municipal waste landfill site, or of a new disposal unit subsequently allowed by permit, as provided by chapter 23-29, shall participate in the fund for that unit provided:

   a. The disposal unit is designed, constructed, operated, and closed to comply with federal and state statutes and adopted rules in effect as of October 9, 1993;

b. The owner or operator has notified the board of the local solid waste management district and the board has acknowledged and approved the municipal waste landfill site to comply with chapter 23-29; and

c. The owner or operator pays the annual premium fee under section 16 of this Act during the duration of operation of the landfill site, except as provided by section 23 of this Act.

2. An owner or operator who does not comply with this section or with section 16 of this Act is ineligible for reimbursement of claims for corrective action.

SECTION 16. Premium fee.

1. Any owner or operator of a municipal waste landfill site who is eligible and participates in the fund shall:

a. Notify the department, on forms to be made available by the department, of its intent to participate in the fund by February 1, 1994, for active disposal units at landfill sites or at the time of application for permit, as provided by chapter 23-29, for new disposal units, whichever date is later;

b. Demonstrate that the disposal unit and the landfill site comply with applicable laws and rules; and

c. Pay an annual premium fee of one dollar per ton [907.18 kilograms] or thirty-three cents per cubic yard [0.76 cubic meter] for all solid waste disposed at the landfill site during the premium fee period.

2. The premium fee is payable annually by January thirtieth for a premium fee period corresponding to the previous calendar year, with the first period inclusive of the nine months ending December 31, 1994.

3. The premium fees collected under this section must be paid to the department for deposit in the state treasury for credit to the fund.

SECTION 17. Reimbursement for corrective action. The department shall reimburse an eligible owner or operator, as provided by section 15 of this Act, for the costs of corrective action, including the investigation, which are greater than one hundred thousand dollars. A reimbursement may not be made unless the department determines that:

1. At the time the release was discovered the owner or operator and the landfill site were in compliance with applicable federal and state statutes and adopted rules, including rules relating to financial responsibility;

2. The department was given notice of the release as required by this Act and other applicable federal and state statutes;

3. The release occurred from the active disposal unit or a new disposal unit pursuant to section 15 of this Act;

4. The owner or operator has paid the first one hundred thousand dollars of cost of corrective action; and

5. The owner or operator, to the extent possible, fully cooperated with the department in responding to the release.

SECTION 18. Application for reimbursement. Any eligible owner or operator who has undertaken corrective action in response to a release, the time of release being unknown, may apply to the department for partial or full reimbursement under sections 4 and 17 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after April 1, 1994.

SECTION 19. Department to determine costs. A reimbursement may not be made from the fund until the department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. A reimbursement may be made to only one person for a release.

SECTION 20. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs as a result of a release.

SECTION 21. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund as provided by sections 6, 7, 10, and 11 of this Act in taking corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the department against the owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 22. Coordination of benefits. If an eligible owner operator has financial assurance that provides coverage for corrective action, the department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of all financial assurance on the same basis.

SECTION 23. Fund ceiling. When the fund balance exceeds fifteen million dollars, the department shall suspend collection of the premium fee. When the fund balance becomes less than five million dollars through appropriations authorized by this Act, the department shall resume collection of the fee.

SECTION 24. Fund appropriation. Money in the fund is appropriated to the department as a standing and continuing appropriation for the purposes of this Act.

SECTION 25. APPROPRIATION. There is hereby appropriated out of any moneys in the fund in the state treasury generated from the premium fees collected under section 16 of this Act, not otherwise appropriated, the sum of $25,000, or so much of the sum as may be necessary to the state department of health and consolidated laboratories for the purpose of administering the municipal waste landfill release compensation fund for the period beginning with the effective date of this Act and ending June 30, 1995.

Approved April 12, 1993
Filed April 12, 1993

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 271

HOUSE BILL NO. 1283
(Representatives Nichols, Sitz, Grosz)
(Senators Andrist, Kinnoin, O'Connell)

STATE HIGHWAY NO MOW AREAS

AN ACT to provide for restrictions on no mow areas in the rights of way of the state highway system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Entry into no mow agreements. No state agency or political subdivision of the state may enter into any agreement to increase the no mow acres contained in the rights of way of the state highway system.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 272

SENATE BILL NO. 2129
(Transportation Committee)
(At the request of the Department of Transportation)

MOTOR CARRIER INSURANCE REGISTRATION

AN ACT to create and enact a new section to chapter 39-19 of the North Dakota Century Code, relating to a single state insurance registration system; to amend and reenact sections 24-02-01.5 and 49-18-42 of the North Dakota Century Code, to delete references to sections being repealed; to repeal section 49-18-41.1 of the North Dakota Century Code, relating to interstate registration and identification; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5, according to chapter 28-32. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-03-03, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, ~~section 49-18-41.1,~~ subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 2 of section 57-43.2-01, and section 57-43.2-37 shall remain in effect until they are specifically amended or repealed by the department.

SECTION 2. A new section to chapter 39-19 of the North Dakota Century Code is created and enacted as follows:

Single state insurance registration system. The director may adopt all rules necessary to enable this state to participate in the single state insurance registration system for motor carriers authorized by section 4005 of the Intermodel Surface Transportation Efficiency Act of 1991 [Pub. L. No. 102-240, 105 Stat. 1914, 49 U.S.C. 11506] and by applicable rules and regulations of the interstate commerce commission. In determining whether to adopt rules as permitted by this section, the director shall consider the costs and benefits to the state of participating in the single state insurance registration program. Any moneys derived from participation in the single state insurance registration program must be deposited in the highway fund.

SECTION 3. AMENDMENT. Section 49-18-42 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-18-42. Auto transportation fund. ~~Except as otherwise provided under section 49-18-41.1, all~~ All fees collected by the commission, under the provisions of this chapter, must be paid into the state treasury monthly and must be credited to the general fund for the purpose of defraying the general expenses of the state government.

SECTION 4. REPEAL. Section 49-18-41.1 of the 1991 Supplement to the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. Sections 1, 3, and 4 of this Act become effective January 1, 1994.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 273

HOUSE BILL NO. 1082
(Transportation Committee)
(At the request of the Department of Transportation)

OAHE BRIDGE

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to the department of transportation's responsibilities and obligations with respect to the construction of a bridge over the Oahe Reservoir; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Agreement for the construction of the Oahe bridge. The director is authorized to execute an agreement with the federal government for the construction of a bridge over the Oahe Reservoir wherein the department agrees to hold the United States harmless and free from damages due to the construction or operation and maintenance of such bridge, except for damages due to the fault or negligence of the United States or its contractors.

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

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 274

SENATE BILL NO. 2133
(Transportation Committee)
(At the request of the Department of Transportation)

DOT AUTHORITY, RECORDS, FEES, AND BIDS

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to the authority of the director of the department of transportation to contract with adjoining states and provinces concerning highway projects; and to amend and reenact sections 24-02-11, 24-02-17, and 24-02-19 of the North Dakota Century Code, relating to the confidentiality of financial records of minority contractors, a fee for providing copies of records, and bidding requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Authority to contract with adjoining states and provinces. The director may contract with adjoining states and provinces to provide for the construction, reconstruction, repair, or maintenance of highways located on or near the border of each jurisdiction.

SECTION 2. AMENDMENT. Section 24-02-11 of the North Dakota Century Code is amended and reenacted as follows:

24-02-11. Records of department open to public - Certain records not open to public - Certified copies. The director is custodian of, and shall preserve, the files and records of the department. The files and records of the department must be open to public inspection under reasonable regulations. However, records relating to the financial condition of any party that has applied for prequalification as a bidder, ~~or~~ is designated as a prequalified bidder pursuant to this chapter, or is an applicant under the disadvantaged business enterprise program are not open to public inspection. Copies of files and records of the department, when certified by the director as being true copies, must be received in evidence in any court in the state with the same force and effect as the originals.

The books of account of the department must be kept accurately and completely as must be prescribed or approved by the state auditor, which must show among other things the following facts:

1. The cost of maintaining the department, including the salaries and expenses of the individual members thereof.

2. The amounts of money expended for the construction or maintenance of the state highways, when and where, and upon what job or portion of the road expended, so that the cost per mile [1.61 kilometers] of such construction or maintenance can be ascertained with ease.

3. The amount of road equipment and materials purchased and when and where and from whom purchased. Such book also must show the price paid for each item. The original invoice or a photographic copy thereof must form a part of the permanent files and records in said department.

4. The director shall charge a uniform fee, by type of record.

SECTION 3. AMENDMENT. Section 24-02-17 of the North Dakota Century Code is amended and reenacted as follows:

24-02-17. Contracts - Bids. Whenever the cost of any construction improvement exceeds the sum of ~~five~~ twenty thousand dollars, the department shall proceed to advertise the same, request bids, and award such contracts in the manner provided in this chapter.

SECTION 4. AMENDMENT. Section 24-02-19 of the North Dakota Century Code is amended and reenacted as follows:

24-02-19. Request for bids - How solicited. Any request for bids for construction work or the improvement of any state highway, or any structure in excess of the amount specified in section 24-02-17, must be advertised by publication once prior to the opening of such bids, in the official newspaper of the county in which the project is located. Any other advertisement made by the director may utilize one or more of the following methods:

1. The publication of the solicitation in a daily newspaper having a general circulation in the area where the project is located.

2. The publication of the solicitation in commonly recognized trade journals or similar publications that advertise the solicitation of bids on public work projects.

3. The written solicitation of all qualified contractors appearing on the bidders' list as maintained by the department of transportation.

When the solicitation is by publication, it must be made at least three weeks prior to the date of the bid opening. The solicitation must state where the bidder may inspect the plans and specifications, with whom bids must be filed, and the time and place where bids must be opened. Such place must be the office of the department.

All requests for bids for the purchase of equipment, materials, and supplies, exclusive of repairs to equipment and except as provided in section 25-16.2-02 in excess of the sum of ~~ten~~ twenty thousand dollars must be advertised in the official newspaper of the county in which the department district is located. The advertisement must be published once a week for a period of two successive weeks prior to the opening of such bids.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 275

SENATE BILL NO. 2493
(Senator Lips)

DEPARTMENT OF TRANSPORTATION CONSULTANTS

AN ACT relating to the prequalification, selection, and contracting of consultants by the department of transportation for the purpose of receiving requests for proposals, proposals, and solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Department of transportation - Prequalification, selection, and contracting for consultants - Solicitations. The director of the department of transportation may prequalify, select, and contract for consultants in the area of engineering, land surveying, architecture, traffic safety, business administration, and related matters. The prequalification of the consultant must be based on detailed information regarding firm organization, qualifications of personnel, type of work the firm is qualified to perform, previous work experience, and financial status. If a consultant meets the criteria set by the director, the director shall prequalify the consultant, noting any limitations as to the type or amount of the work the consultant may perform. When a consultant is prequalified, the consultant is entitled to receive requests for proposals, proposals, and other solicitations for work without any other screening or qualification process. The period of prequalification may not exceed three years. The qualifications of the consultant for a specific project must be determined according to the criteria in subsection 5 of section 54-44.7-03. The director shall publish a prequalification solicitation at least once each year and need not comply with the provision in subdivision c of subsection 2 of section 54-44.7-03 requiring the publication of an invitation for a specific project. The selection and contract negotiation must be performed according to subsections 6 and 7 of section 54-44.7-03.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 276

SENATE BILL NO. 2128
(Transportation Committee)
(At the request of the Department of Transportation)

DOT SHORT-TERM FINANCING

AN ACT to amend and reenact section 24-02-40 of the North Dakota Century Code, relating to short-term financing for the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-40 of the North Dakota Century Code is amended and reenacted as follows:

24-02-40. Short-term financing. The department is hereby authorized, whenever needed, to arrange, with any state-owned or private financing agency, ~~state-owned or private~~ including the Bank of North Dakota, short-term loans in the event that construction funds on hand are insufficient to meet current obligations ~~and federal aid allocations due or to become due have not been received, and state apportionment of highway user revenues are due but have not been made~~. Short-term financing as provided herein must be in amounts no larger than can be repaid within ~~six months~~ four years from moneys known to be due and forthcoming ~~from normal sources to the department. The rate of interest authorized to be paid by the department must be at a rate not greater than three percent per annum, payments for such interest must be made from present sources of revenue of the department~~. In no event may such short-term financing be used in anticipation of increased federal-aid highway grants or increased state highway user revenue funds, nor may such loans be obligated for road construction that cannot be financed from known source of income.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 277

HOUSE BILL NO. 1257
(Representatives Laughlin, Hagle)
(Senator Kelsh)

SECTION LINE OBSTRUCTIONS

AN ACT to amend and reenact subsection 1 of section 24-06-28, sections 24-06-29, and 24-06-30 of the North Dakota Century Code, relating to obstruction of section lines by trees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 24-06-28 of the North Dakota Century Code is amended and reenacted as follows:

1. No person may place or cause to be placed any permanent obstruction, stones, trees, or rubbish within thirty-three feet [10.06 meters] of any section line, unless written permission is ~~first~~ secured from the board of county commissioners or the board of township supervisors, as the case may be. ~~Such~~ The permission must be granted where the section line has been closed pursuant to section 24-07-03 or where the topography of the land along ~~such~~ the section line is such that in the opinion of the board of county commissioners or board of township supervisors, as the case may be, the construction of a road on the section line is impracticable.

SECTION 2. AMENDMENT. Section 24-06-29 of the North Dakota Century Code is amended and reenacted as follows:

24-06-29. Removal of obstructions when section lines opened - Cost. ~~In case~~ If any person places or causes to be placed any stones, trees, or rubbish within thirty-three feet [10.06 meters] of any section line, the board of county commissioners or board of township supervisors, as the case may be, when a public highway is opened along ~~such~~ the section line, shall notify the owners of adjacent property to remove ~~such~~ the stones, trees, or rubbish. Written notice by registered ~~or certified~~ mail to the record owner of ~~such~~ the adjacent property mailed to ~~such~~ the owner's last known address ~~last known to such board~~ and ~~by registered or certified mail~~ to any other persons~~, if any,~~ in possession of ~~such~~ the property constitutes valid notice. If ~~such~~ the owners fail to remove the ~~same~~ stones, trees, or rubbish within thirty days after ~~such~~ the notice ~~has been~~ is mailed, the board of county commissioners or the board of township supervisors, as the case may be, shall ~~cause such~~ remove the stones, trees, or rubbish ~~to be removed and the~~. The cost ~~thereof must be returned and~~ of removal must be entered the same as taxes against the adjacent property ~~from which the stones originally were taken,~~ and ~~must be~~ paid in the same manner as taxes.

SECTION 3. AMENDMENT. Section 24-06-30 of the North Dakota Century Code is amended and reenacted as follows:

24-06-30. Removal of fences - Notice - Cost. When a public highway is opened along any section line, the board of county commissioners or the board of township

supervisors, as the case may be, shall notify the owner of adjacent property to remove any fences not constructed pursuant to subsection 2 of section 24-06-28 within thirty-three feet [10.06 meters] of the section line in the manner provided for notice to remove stones, trees, or rubbish. If the owner of adjacent property fails to remove the fences within thirty days after the notice ~~has been~~ is given, the board of county commissioners or the board of township supervisors, as the case may be, shall ~~cause~~ remove the fences ~~to be removed, and the~~. The cost ~~thereof must be returned and~~ of removal must be entered the same as taxes against the adjacent property and ~~must be~~ paid in the same manner as taxes ~~are paid~~.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 278

SENATE BILL NO. 2383
(Senators Schoenwald, Nething)

RAILROAD CROSSING CLOSING

AN ACT to amend and reenact section 24-09-10 of the North Dakota Century Code, relating to changing railroad crossings; and to repeal section 49-11-05 of the North Dakota Century Code, relating to railroad highway crossings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-09-10 of the North Dakota Century Code is amended and reenacted as follows:

24-09-10. Changing or closing railroad crossing - Power of public service commission - Hearing. It is in the interest of public safety to eliminate unnecessary railroad grade crossings whenever reasonable access can be safely provided at another crossing. Whenever it is desired, either by the public officials having the necessary authority or by the railway company operating the railroad, to establish, vacate, or relocate any crossing of a public highway and a railroad, or to separate grades, and an agreement cannot be reached between the public official and the railway company, either as to the necessity for establishing, vacating, or relocating a crossing or for separating grades, as to place, manner of construction, or a reasonable division of the expense, either party may file a petition with the commission, setting forth the facts and submitting the matter to it for determination. The commission, after giving notice as it shall deem reasonable, shall conduct a hearing and shall issue its order determining whether there should be an establishment, vacation, or relocation of the crossing in question, or a separation of grades, and dividing the expense of the establishment, relocation, or separation of grades. ~~Whenever a railroad crossing of any kind has been established, or relocated, in order to eliminate an adjacent or nearby crossing deemed by the commission to be unreasonably dangerous, the commission has the power to order the dangerous crossing closed.~~ Irrespective of the establishment ~~or~~, relocation, or the consideration of further reasonable protection of a crossing~~,~~; if the commission ~~deems~~ finds any railroad crossing to be ~~unreasonably dangerous~~ unnecessary or unsafe, it ~~may~~ shall order the crossing closed after reasonable notice and hearing. Whenever a final order is entered vacating or closing a crossing, it must be vacated or closed at the railroad company's expense.

SECTION 2. REPEAL. Section 49-11-05 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 11, 1993
Filed March 11, 1993

MENTALLY ILL, TUBERCULAR, BLIND, AND DEAF

CHAPTER 279

SENATE BILL NO. 2370
(Senators W. Stenehjem, Evanson)

CIVIL COMMITMENT

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-04, 25-03.1-08, 25-03.1-09, 25-03.1-10, 25-03.1-11, 25-03.1-13, 25-03.1-16, 25-03.1-17, 25-03.1-18.1, 25-03.1-22, 25-03.1-23, 25-03.1-25, 25-03.1-26, 25-03.1-27, 25-03.1-30, 25-03.1-31, 25-03.1-33, 25-03.1-34, 25-03.1-35, 25-03.1-40, 25-03.1-41, 25-03.1-42, and 25-03.1-43 of the North Dakota Century Code, relating to civil commitment and treatment of mentally ill or chemically dependent persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions. In this chapter, unless the context requires otherwise:

1. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.

2. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.

3. "Court" means, except where otherwise indicated, the county court of the county ~~wherein~~ in which the respondent resides.

~~3.~~ 4. "Department" means the department of human services.

~~4.~~ 5. "Director" means the director of a treatment facility or the director's designee.

~~5.~~ 6. "Expert examiner" means a licensed physician, psychiatrist, ~~clinical~~ psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status may be made only by a ~~licensed~~ psychiatrist or ~~clinical~~ psychologist trained in a clinical program, and an ~~examination by a licensed addiction counselor must be limited to~~ evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.

~~6.~~ 7. "Independent expert examiner" means a licensed physician, psychiatrist, ~~clinical~~ psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent ~~meets the criteria of~~ is a person requiring treatment. An ~~examination by a licensed addiction counselor must be limited to~~ evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent ~~and whether the respondent is a person requiring treatment~~ may be made only by a licensed physician or licensed addiction counselor.

~~7.~~ 8. "Magistrate" means the judge of the appropriate county or juvenile court or a judge assigned by the presiding judge of the judicial district.

~~8.~~ 9. "Mental health professional" means:

a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.

b. A social worker with a master's degree in social work from an accredited program.

c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.

d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c, or of an expert examiner.

e. A licensed addiction counselor.

f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.

~~9.~~ 10. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded ~~or mentally deficient~~ person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is mentally retarded may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.

~~10.~~ 11. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person,

others, or property. "Serious risk of harm" means a substantial likelihood of:

a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;

b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;

c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or

d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors.

~~11.~~ 12. "Private treatment facility" means any facility established under chapters 10-19.1, 10-22, and 10-24 and licensed under chapter 23-16 or 23-17.1.

13. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.

~~12.~~ 14. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.

~~13.~~ 15. "Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.

~~14.~~ 16. "Respondent" means a person subject to petition for involuntary treatment.

~~15.~~ 17. "Superintendent" means the state hospital superintendent or the superintendent's designee.

~~16.~~ 18. "Third-party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third-party payer.

~~17.~~ 19. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown or any evaluation and treatment facility ~~which can provide~~ that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency.

SECTION 2. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Voluntary admission. ~~Pursuant to~~ Under rules adopted by the department, an application for admission to a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill or chemically dependent or who has symptoms of ~~such~~ those illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill or chemically dependent or who has symptoms of ~~such~~ those illnesses, by the minor's parent or legal guardian. The application must be submitted to a regional human services center, or, in an emergency, to the state hospital. Upon receipt of an application, the regional human service center must arrange for an evaluation of the applicant and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or the director shall immediately designate a physician, psychiatrist, ~~clinical~~ psychologist, or mental health professional to examine the patient.

SECTION 3. AMENDMENT. Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional. Any person eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The attorney shall assist the person in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to ~~such~~ those facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:

1. A written statement supporting the petition from a psychiatrist, physician, or ~~clinical~~ psychologist who has personally examined the respondent within forty-five days of the date of the petition.

2. One or more supporting affidavits otherwise corroborating the petition.

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional ~~as~~ designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 4. AMENDMENT. Section 25-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-09. Review of petition for involuntary treatment - Probable cause established - Respondent notified - Rights.

1. Upon the filing of a petition for involuntary treatment, the clerk of court shall immediately notify the magistrate who shall review the petition and accompanying documentation to determine whether it complies with requirements of section 25-03.1-08 and whether it establishes probable cause to believe the respondent ~~meets the criteria of~~ is a person requiring treatment. If probable cause has not been so established, the petition must be dismissed unless an amendment would cure the defect.

2. If probable cause has been established, the magistrate shall cause to be served on the respondent and his nearest relative or guardian or, if none, a friend of the respondent~~, copies:~~

   a. A copy of the petition and supporting documentation. ~~This must be accompanied by~~

   b. A notice informing the respondent of the procedures required by this chapter. ~~This notice also must include~~

   c. A notice of the respondent's right to a preliminary and a treatment hearing when in custody under section 25-03.1-25 and if mental illness or a combination of mental illness and chemical dependency of the respondent is alleged in the petition, or, if not in custody or if in custody and chemical dependency alone is alleged in the petition, the right to a treatment hearing; of the right to be present at the hearings; of the right to have counsel ~~prior to~~ before the hearings and any court-ordered examination; of the right to an independent evaluation; and, if the respondent is indigent, of the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence. ~~If~~

   d. Notice that if an independent expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

SECTION 5. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination. If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, or ~~clinical~~ psychologist who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of ~~his~~ the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear, the address to which the respondent is to report, and a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, ~~he~~ the respondent may be involuntarily taken into custody and transported to the appointed place. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at ~~the~~

~~state hospital or~~ a treatment facility, at the respondent's home, or at any other suitable place in the community. The respondent may be accompanied by one or more ~~of his~~ relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county ~~which~~ that is the respondent's place of residence.

SECTION 6. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with~~,~~ or request participation in the examination by~~,~~ any qualified mental health professional~~,~~ and may include with the written examination report any findings or observations by ~~such~~ that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:

1. Evaluations of the respondent's physical condition and mental status.
2. A conclusion as to whether the respondent ~~meets the criteria of~~ is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
3. If the report concludes that the respondent ~~meets the criteria of~~ is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
4. The signature of the examiner who prepared the report.

If the expert examiner concludes that the respondent ~~does~~ is not ~~meet the criteria of~~ a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent ~~does meet the criteria of~~ is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for ~~a preliminary~~ hearing and shall give notice of ~~this~~ hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical dependency, the preliminary hearing date must be within seven days of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If ~~the~~ a preliminary hearing is not required, the treatment hearing must be held within seven days of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 7. AMENDMENT. Section 25-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-13. Right to counsel - Indigency - Waiver - Recoupment - Limitations.

1. Every respondent under this chapter is entitled to legal counsel.

2. Unless an appearance has been entered on behalf of the respondent, the court shall, within twenty-four hours, exclusive of weekends or holidays, from the time the petition was filed, appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel shall immediately notify the court of that fact.

3. If, after consultation with counsel, the respondent wants to waive the right to counsel or the right to any of the hearings provided for under this chapter, the respondent may do so by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and must also be signed by counsel.

4. If the court determines that the respondent is indigent, the court shall order that appointed counsel be compensated from county funds of the county ~~which~~ that is the respondent's place of residence in a reasonable amount based upon time and expenses. After notice and hearing, the court may order a respondent with appointed counsel to reimburse the county for expenditures made on the respondent's behalf.

5. If the state's attorney of a county that has expended sums under subsection 4 on behalf of a respondent who is liable to reimburse the county determines that the respondent may have funds or property to reimburse the county, the state's attorney shall seek civil recovery of those sums. Commencement of the action must occur within six years after the date the sums were paid.

SECTION 8. AMENDMENT. Section 25-03.1-16 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-16. Medication pending treatment order. A patient who has requested release or a person who is the subject of a petition for ~~hospitalization~~ treatment has the right to refuse medication and other forms of treatment before the preliminary or treatment hearing. However, a physician may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the respondent or others or to prevent imminent deterioration of the respondent's physical or mental condition. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescribing physician, the need for the medication still exists or discontinuation would hamper the respondent's preparation ~~of~~ for and participation in the proceedings.

SECTION 9. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-17. Involuntary treatment - ~~Preliminary~~ Right to preliminary hearing. A respondent who is in custody under section 25-03.1-25 and who is alleged to be mentally ill or to be suffering from a combination of chemical dependency and mental illness is entitled to a preliminary hearing. At the preliminary hearing the magistrate shall review the medical report. During the hearing the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing,

if the court does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed. The person must be ordered discharged from the ~~hospital or~~ treatment facility if that person has been detained before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it shall consider less restrictive alternatives to involuntary detention and treatment. The court may then order respondent to undergo up to fourteen days treatment under a less restrictive alternative or, if it finds that ~~such alternatives are~~ alternative treatment is not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent~~,~~ and give written notice~~,~~ that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

SECTION 10. AMENDMENT. Section 25-03.1-18.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.1-18.1. Court authorized involuntary treatment with prescribed medication.

1. a. Upon ~~advance~~ notice ~~to the court and the parties~~ and hearing, a treating psychiatrist may request authorization from the court to treat a ~~patient~~ person under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing ~~if~~. As a part of the request, the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient shall certify:

   ~~a.~~ (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and there is a reasonable expectation that if the person is not treated as proposed there exists a serious risk of harm to that person, other persons, or property;

   ~~b.~~ (2) That the patient was offered ~~such~~ that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about ~~such~~ that treatment;

   ~~c.~~ (3) That ~~the~~ prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and

   ~~d.~~ (4) That the benefits of the treatment outweigh the known risks to the patient.

   b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

2. a. Evidence of the factors certified under subsection 1 may be presented to the court at an involuntary treatment hearing held pursuant to sections 25-03.1-19 and 25-03.1-22, or at a separate hearing after motion and notice. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:

   ~~a.~~ (1) The danger the patient presents to self or others;

   ~~b.~~ (2) The patient's current condition;

   ~~c.~~ (3) The patient's past treatment history;

   ~~d.~~ (4) The results of previous medication trials;

   ~~e.~~ (5) The efficacy of current or past treatment modalities concerning the patient;

   ~~f.~~ (6) The patient's prognosis; and

   ~~g.~~ (7) The effect of the patient's mental condition on the patient's capacity to consent.

   b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.

3. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in its involuntary treatment order a provision, or it may issue a separate order after notice and hearing, authorizing the treating psychiatrist to involuntarily treat the patient with prescribed medication on such terms and conditions as are appropriate. ~~However, no such provision is effective~~ The order for involuntary treatment with prescribed medication, however, may not be in effect for more than ninety days~~, unless prior to the expiration of that time period the treating psychiatrist submits a report to the court indicating that the involuntary treatment with prescribed medication remains appropriate and necessary to effectively treat the patient. Based on such reports, a review of the patient's progress, and the patient's concerns, the court may extend its authorization for involuntary treatment with prescribed medication for additional ninety-day periods if the patient remains under an involuntary treatment order~~.

4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the treating psychiatrist has requested authorization for involuntary treatment with prescribed medication, only a ~~licensed physician or~~ psychiatrist may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

SECTION 11. AMENDMENT. Section 25-03.1-22 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-22. ~~Involuntary~~ Length of involuntary and continuing treatment orders.

1. An initial order for involuntary treatment ~~must be for a period~~ may not ~~to~~ exceed ninety days.

2. If~~, before the expiration of the ninety-day order,~~ the director or superintendent believes that a ~~patient's condition is such that the~~ patient continues to require treatment, the director or superintendent shall, not less than fourteen days before the expiration of the initial order, petition the court where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing treatment, which order may be for ~~an unspecified~~ a period ~~of time~~ not to exceed one year. The court shall set a hearing date that must be within fourteen days after the petition was filed, unless extended for good cause shown.

3. Unless extended under section 25-03.1-31, continuing treatment orders of indefinite duration issued before August 1, 1993, expire as follows:

   a. Those orders issued before August 1, 1991, expire September 30, 1993.

   b. Those orders issued from August 1, 1991, through July 31, 1992, expire December 31, 1993.

   c. Those orders issued from August 1, 1992, through August 1, 1993, expire on their first anniversaries or on March 31, 1994, whichever is later.

4. A respondent subject to a continuing treatment order of indefinite duration retains the rights to periodic review and to petition for discharge under section 25-03.1-31 as that section existed on July 31, 1993.

SECTION 12. AMENDMENT. Section 25-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-23. Petition for continuing treatment orders. A petition for an order authorizing continuing treatment must contain~~:~~ a statement setting forth the reasons for the ~~superintendent's or director's~~ determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a certificate executed by a physician, psychiatrist, or ~~clinical~~ psychologist. ~~The court shall set a hearing date which must be within fourteen days of the date of service of the petition.~~

SECTION 13. AMENDMENT. Section 25-03.1-25 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician, psychiatrist, ~~clinical~~ psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of ~~such~~ an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, ~~clinical~~

psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.

2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than seven days after the date of the order.

3. Detention under this section may be:

   a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to ~~himself~~ self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

   b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

4. Immediately upon being taken into custody, the person must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's ~~right~~ rights to counsel and to a preliminary or treatment hearing.

5. Upon arrival at a facility the peace officer, physician, psychiatrist, ~~clinical~~ psychologist, or mental health professional who conveyed the person or who caused the person to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, ~~clinical~~ psychologist, or the mental health professional who caused the person to be conveyed. The written report must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the ~~belief~~ beliefs that the individual is a person requiring treatment and that, because of ~~such~~ that person's condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

SECTION 14. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. ~~The state hospital or~~ A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if the superintendent or director finds that the subject does not meet the emergency commitment standards or file a petition if one has not been filed with the court of the person's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency, or a treatment hearing, if the respondent is alleged to be suffering from chemical dependency, to be held no later than seven days after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted ~~himself~~ for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 15. AMENDMENT. Section 25-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-27. Notice and statement of rights.

1. Whenever any person is detained for emergency evaluation and treatment under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, to receive:

   a. A copy of the petition which asserted that the individual is a person requiring treatment.

   b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of hospitalization, excluding holidays.

   c. A written statement in simple terms explaining the rights of the individual alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if the individual is certified by an expert examiner or examiners as a person requiring treatment.

   d. A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.

2. If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain them in a language the individual understands, and a note of the explanation and by whom made must be entered into the patient record.

SECTION 16. AMENDMENT. Section 25-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-30. Discharge of hospitalized patient - Transfer to alternative treatment - Termination of alternative treatment.

1. The superintendent or director may at any time discharge a voluntarily hospitalized patient ~~he deems~~ who is clinically suitable for discharge.

2. The superintendent or director shall discharge a patient hospitalized by court order when the patient's mental condition is such that ~~he~~ the patient no longer ~~meets the criteria of~~ is a person requiring treatment.

3. If a patient discharged ~~pursuant to~~ under subsection 1 or 2 has been hospitalized by a court order, or if court proceedings are pending, the court must be notified of the discharge by the treatment facility.

4. A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment ~~pursuant to this chapter~~ may terminate the alternative treatment if ~~he deems~~ the patient is clinically suitable for termination of treatment. ~~He~~ The person shall terminate the alternative treatment when the ~~patient's mental condition is such that he~~ patient no longer ~~meets the criteria of~~ is a person requiring treatment and shall notify the court upon ~~such~~ that termination.

5. If, upon the discharge of a hospitalized patient or the termination of alternative treatment of an individual under this chapter, ~~it is determined that~~ the individual would benefit from ~~the receipt of~~ further treatment, the hospital or provider of alternative treatment shall offer appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis. With the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons~~, or both,~~ of the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist mentally ill or chemically dependent persons, and the individual's physician. The agencies and persons notified of the individual's release shall report to the ~~state hospital~~ facility that initial contact with the individual has been accomplished.

6. If, ~~prior to the~~ before expiration of ~~a ninety-day~~ an initial treatment order, the superintendent or director determines that a less restrictive form of treatment would be more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court which last ordered the patient's hospitalization to modify its order. The petition must contain ~~a statement~~ statements setting forth the reasons for the determination that the patient continues to require treatment, ~~a statement setting forth~~ the reasons for the determination that a less

restrictive form of treatment would be more appropriate for the patient, and ~~a statement~~ describing the recommended treatment program. If the patient consents, the court may, without a hearing, modify its treatment order by directing the patient to undergo the agreed treatment program for the remainder of the ~~ninety-day~~ treatment order. The patient must be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of ~~his~~ the protest.

SECTION 17. AMENDMENT. Section 25-03.1-31 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-31. ~~Review of current status of~~ Procedure to extend **continuing treatment** orders - Respondent's right to petition for discharge.

1. If the director or superintendent believes that a respondent continues to be a person requiring treatment, the director or superintendent shall, not less than thirty days before expiration of the order, petition the court where the facility is located for another continuing treatment order in the manner prescribed by section 25-03.1-23. The petition must also contain a notice to the respondent that, unless the respondent waives a hearing on the petition within fifteen days after service of the petition upon the respondent, a hearing will be held by the court. The court shall appoint counsel for the respondent upon receipt of the petition, unless retained counsel has appeared on behalf of the respondent. If retained counsel has appeared, the court shall provide notice of the petition to the attorney. If the hearing is not waived, it must be held within thirty days after the petition was filed, unless extended for good cause shown. The burden of proof is the same as in an involuntary treatment hearing.

2. Every individual subject to an order of continuing treatment has the right to ~~regular, adequate, and prompt review of his current status as a person requiring treatment and in need of hospitalization. Six months from the date of an order of continuing treatment, and every year thereafter, the director or superintendent where an individual is hospitalized shall review his status as a person requiring treatment and in need of hospitalization. The results of each periodic review conducted under this chapter must be made part of the patient's record, and must be filed within five days of the review, in the form of a written report, with the court where the facility is located. Within this five-day period, the director or superintendent shall give notice of the results of the review to the patient, his attorney, and his nearest relative or guardian.~~

~~If a periodic review report concludes that the patient continues to require treatment and hospitalization, and the patient objects to either or both of those conclusions, the patient shall have the right to a hearing, an independent evaluation, and may~~ petition the court for discharge once annually. ~~This~~ The petition may be presented to the court or a representative of the ~~hospital or~~ facility ~~within seven days, excluding weekends and holidays, after the report is received. If the petition is presented to a representative of the hospital or facility, he~~ who shall transmit it to the court forthwith. ~~The petition must be accompanied by a report from a physician, psychiatrist, or clinical psychologist setting forth the reasons for his or her conclusions that the patient no longer is a person requiring treatment or in need of hospitalization.~~ If ~~no such report~~

~~accompanies the petition because~~ the patient is indigent or is unable for reasons satisfactory to the court to ~~procure such a report~~ obtain an independent expert examiner, the court shall appoint an independent expert examiner to examine the patient~~,~~ and ~~the examiner shall~~ to furnish a report to the court.

~~If such report concludes that the patient continues to be a person requiring treatment and in need of hospitalization, the court shall so notify the patient and shall dismiss the petition for discharge. If the conclusion is to the contrary,~~ ~~the~~ The court shall set a hearing date which must be within fourteen days of receipt of the examiner's report. At the hearing, the burden of proof is the same as in an involuntary treatment hearing.

SECTION 18. AMENDMENT. Section 25-03.1-33 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-33. Legal incompetence - Presumption - Finding - Adjudication negated.

1. No determination that a person requires treatment, no court order authorizing hospitalization or alternative treatment, nor any form of admission to a hospital gives rise to a presumption of, constitutes a finding of, or operates as an adjudication of legal incompetence, or of the inability to give or withhold consent.

2. No order of commitment under any previous statute of this state, in the absence of a concomitant appointment of a guardian, constitutes a finding of or operates as an adjudication of legal incompetence, or of the inability to give or withhold consent.

SECTION 19. AMENDMENT. Section 25-03.1-34 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34. Transfer of patients.

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from ~~one~~ a hospital to another ~~hospital or~~ facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. ~~In all such transfers, due~~ Due consideration must be given to the relationship of the patient to family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any ~~public or private institution~~ treatment facility licensed by any state for the care and treatment of mentally ill or chemically dependent persons ~~shall by agreement~~ agrees with a parent, a spouse, a brother, a sister, a child of legal age, or guardian of any patient to accept the patient for treatment, the superintendent or director of the treatment facility shall release the patient to the ~~institution~~ other facility.

2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ordered hospitalized ~~under law in any hospital for care or treatment of mentally ill or chemically dependent persons and the individual~~ who is eligible for care or treatment in a ~~hospital or institution~~ treatment facility of ~~such~~ that agency, the superintendent or director of the treatment

facility may cause the individual's transfer to ~~such~~ that agency of the United States for ~~hospitalization~~ treatment. No person may be transferred to any agency of the United States if the person is confined pursuant to conviction of any felony or misdemeanor or the person has been acquitted of the charge solely on the ground of mental illness unless the court originally ordering confinement of the person enters an order for ~~such~~ transfer after appropriate motion and hearing. Any person transferred ~~as provided~~ under this section to an agency of the United States is deemed ~~to be hospitalized by such~~ committed to that agency ~~pursuant to~~ under the original order of ~~hospitalization~~ treatment.

3. No ~~patient~~ facility may ~~be transferred~~ transfer a patient to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court ~~ordering hospitalization~~ that ordered treatment. The patient must be given an opportunity to protest the transfer and to receive a hearing on the protest. The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the ~~hospital or~~ facility within seven days after the notice of transfer was received. If the objection is presented to a representative of the ~~hospital or~~ facility, the representative shall transmit it to the court forthwith. The court shall set a hearing date which must be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 20. AMENDMENT. Section 25-03.1-35 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-35. ~~Hospitalization~~ Treatment by an agency of the United States.

1. If ~~an individual ordered to be involuntarily hospitalized pursuant to~~ a respondent under this chapter is eligible for ~~hospital care or~~ treatment by any agency of the United States, the court, upon receipt of notice from ~~such~~ that agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order ~~him to be~~ the respondent placed in the custody of ~~such~~ the agency for ~~hospitalization~~ treatment. ~~When any such~~ Any individual ~~is~~ admitted ~~pursuant to~~ under the order of the court to any ~~hospital or institution~~ treatment facility operated by any agency of the United States within or without the state~~, he~~ is subject to the rules and regulations of ~~such~~ the agency. The chief officer of any ~~hospital or institution~~ treatment facility operated by ~~such~~ an agency ~~in which the individual is so hospitalized shall with respect to such individual be vested with~~ has the same powers as the heads of ~~hospitals~~ treatment facilities within this state with respect to detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in the committing court of this state at any time to inquire into the mental condition of an individual so ~~hospitalized,~~ transferred or placed and to determine the necessity for continuance of ~~his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned~~ treatment.

2. An order of a court of competent jurisdiction of another state~~,~~ or of the District of Columbia~~,~~ authorizing ~~hospitalization~~ treatment of an individual by any agency of the United States has the same force and effect as to the individual while in this state as in the geographical jurisdiction of the court entering the order; and the courts of the state or district issuing the order ~~must be deemed to have retained~~ retain jurisdiction of the individual ~~so hospitalized~~ for the ~~purpose~~ purposes of inquiring into ~~his~~ the individual's mental condition and of determining the necessity for continuance of ~~his hospitalization, as is provided in subsection 1 with respect to individuals ordered hospitalized by the courts of this state~~ treatment. Consent is hereby given to the application of the law of the state or district in which ~~is located~~ the court issuing the order for ~~hospitalization~~ treatment is located with respect to the authority of the chief officer of any ~~hospital or institution~~ treatment facility operated in this state by any agency of the United States to retain custody, transfer, conditionally release, or discharge the individual ~~hospitalized~~ being treated.

SECTION 21. AMENDMENT. Section 25-03.1-40 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-40. Rights of patients. Each patient of a treatment facility ~~shall retain~~ retains the following rights, subject only to the limitations and restrictions authorized by section 25-03.1-41. A patient has the right:

1. To receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability.
2. To the least restrictive conditions necessary to achieve the purposes of treatment.
3. To be treated with dignity and respect.
4. To be free from unnecessary restraint and isolation.
5. To visitation and telephone communications.
6. To send and receive sealed mail.
7. To keep and use personal clothing and possessions.
8. To regular opportunities for outdoor physical exercise.
9. ~~To participate in religious worship of choice~~ To be free to exercise religious faith of choice.
10. To be free from unnecessary medication.
11. To exercise all civil rights including the right of habeas corpus.
12. Not to be subjected to experimental research without the express and informed written consent of the patient or of the patient's guardian.
13. Not to be subjected to psychosurgery, electroconvulsive treatment, or aversive reinforcement conditioning, without the express and informed written consent of the patient or of the patient's guardian.

SECTION 22. AMENDMENT. Section 25-03.1-41 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-41. Limitations and restrictions of patient's rights. The rights enumerated in subsections 5, 6, 7, and 8 of section 25-03.1-40 may be limited or restricted by the treating physician, psychiatrist, or ~~clinical~~ psychologist trained in a clinical program, if in ~~his~~ that person's professional judgment to do so would be in the best interests of the patient and the rights are restricted or limited in the manner authorized by the rules ~~and regulations promulgated~~ adopted pursuant to section 25-03.1-46. Whenever a physician, psychiatrist, or ~~clinical~~ psychologist trained in a clinical program responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as authorized by the rules ~~and regulations~~, a written order specifying the restriction and the reasons ~~therefor~~ for the restriction must be signed by the physician, psychiatrist, or ~~clinical~~ psychologist trained in a clinical program and attached to the patient's chart. These restrictions must be reviewed at intervals of not more than fourteen days and may be renewed by following the procedure set out in this section.

SECTION 23. AMENDMENT. Section 25-03.1-42 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information who makes the petition for ~~hospitalization~~ involuntary treatment of another person under this chapter is not subject to civil or criminal liability.

2. A physician, psychiatrist, ~~clinical~~ psychologist, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for acting unless it can be shown that it was done in a negligent manner.

3. A person who makes a petition for ~~hospitalization~~ involuntary treatment of another person without having good cause to believe that the other person is suffering from mental illness or chemical dependency and as a result is likely to cause serious harm to ~~himself~~ self or others is guilty of a class A misdemeanor.

SECTION 24. AMENDMENT. Section 25-03.1-43 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility must be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records are available to the court and, under regulations established by the department, may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient

to whom the patient has given written consent to have information disclosed.

2. Individuals to whom the patient has given written consent to have information disclosed.

3. Persons legally representing the patient, including attorneys representing the patient in commitment proceedings, upon proper proof of representation ~~and unless the patient specifically withholds consent~~.

4. Persons authorized by a court order.

5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, the patient's consent is given, and the facility recognizes the project as a bona fide research or statistical undertaking.

6. The department of corrections and rehabilitation in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.

7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment, or when necessary to report a crime committed on facility premises or against facility staff or patients, or threats to commit such a crime~~, provided such~~. The disclosures ~~are~~ must be directly related to a patient's commission of a crime or threats to commit such a crime and are limited to the circumstances of the incident, the name and address of the patient involved, and ~~such~~ the patient's last known whereabouts.

8. Qualified service organizations and third-party payers to the extent necessary to perform their functions.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 280

HOUSE BILL NO. 1490
(Representatives D. Olsen, A. Olson, Dorso)
(Senators Mathern, Tallackson)

DEVELOPMENTAL CENTER SERVICES AND RECORDS

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to services provided by the developmental center at Grafton; and to amend and reenact sections 25-04-02, 25-04-04, and subsection 1 of section 25-04-16 of the North Dakota Century Code, relating to services provided by the developmental center at Grafton.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-04-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-04-02. Purpose of developmental center at Grafton.

1. The developmental center at Grafton must be maintained for the relief, instruction, care, and custody of ~~the~~ persons who are developmentally disabled or other persons who may benefit from the services offered at the center. For this purpose the department of human services may introduce and establish such trades and manual industries as in its judgment will best prepare the residents for future self-support.

2. The department may provide onsite and offsite additional services and effectuate its powers and duties to best serve persons who are developmentally disabled and other persons who may benefit from those activities. The services provided and the duties effectuated need not be accredited by the accreditation council on services for people with developmental disabilities or certified by the health care financing administration, or any other similar accrediting or certifying organization, if the service or duty is not provided to persons who are developmentally disabled or if such accrediting or certifying organization does not accredit or certify the service or duty.

SECTION 2. AMENDMENT. Section 25-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-04-04. Who may receive benefits of developmental center. Subject to this chapter and to any rules adopted by the department of human services, the benefits of the developmental center at Grafton may be received by:

1. ~~Developmentally~~ Persons who are developmentally disabled ~~persons~~ and other persons who may benefit from services provided at the developmental center who, in the opinion of the superintendent of the developmental center at Grafton, are of suitable age and capacity to receive instruction in the center and whose deficiencies prevent them from receiving proper training and instruction in the public schools; ~~or~~

2. ~~Developmentally~~ Persons who are developmentally disabled ~~persons~~ and other persons who may benefit from services provided at the developmental center, who cannot be properly cared for in their homes or other available facilities~~,~~; or

3. Persons who are developmentally disabled and other persons who may benefit from onsite and offsite services provided or duties effectuated by the developmental center.

Residents and nonresidents of this state may receive the benefits of the developmental center. Priority, however, must be given to residents of this state ~~with~~ and first priority must be given to persons who are developmentally disabled ~~persons receiving first priority~~.

SECTION 3. AMENDMENT. Subsection 1 of section 25-04-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~The patient, former patient, parent of a patient or former patient~~ Except with respect to services provided and duties effectuated for persons other than residents of the developmental center who are developmentally disabled, and except with respect to services provided and duties effectuated under subsection 2 of section 25-04-02, the resident, former resident, parent of a resident or former resident under age eighteen, personal representative, or guardian may make application to the supervising department to pay less than the costs or none of the costs incurred by the state for the ~~patient's~~ resident's care and treatment at the developmental center at Grafton. An application from a ~~patient, former patient~~ resident, former resident, personal representative, or guardian must be accompanied by proof of the ~~patient's~~ resident's or the estate of the ~~patient's~~ resident's inability to pay. An application from a parent of a ~~patient~~ resident or former ~~patient~~ resident must be accompanied by proof that the parent has applied for or cooperated fully in an application for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workers' compensation, or medical care and disability programs for provision of services to the ~~patient~~ resident, and has assured the contribution of those services, compensation, and contract and program benefits to meet the cost of care provided to the ~~patient~~ resident by the developmental center at Grafton. A waiver must be granted upon receipt of an application from such a parent, which is complete and supported by the required proofs and is effective for so long as the parent continues to apply for or cooperate fully in applications for services, compensation, and contract and program benefits, and continues to assure the contribution of those services, compensation, and benefits to meet the costs of care. A waiver, once granted~~,~~ with respect to a ~~patient~~ resident under age eighteen, extinguishes any debt that would otherwise be owed by the ~~patient~~ resident, the ~~patient's~~ resident's parents, or the ~~patient's~~ resident's estate with respect to care and treatment furnished during times the waiver is effective.

SECTION 4. A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Quality assurance review committees - Reports - Immunity. Any information, data, report, or record made available to an internal quality assurance review committee of the developmental center at Grafton is confidential and may be used by the committee and the members thereof only in the exercise of the proper functions of the committee. The proceedings and records of the committee are not subject to subpoena or discovery or introduction into evidence in any civil action arising out of any matter under consideration by the committee. Any information, document, or record otherwise available from original sources is not immune from discovery or use in any civil action merely because it was presented during the proceedings of the committee, nor may any person who testified before the committee or who is a member of it be prevented from testifying as to matters within that person's knowledge, but a witness cannot be asked about that witness' testimony before the committee. This section does not relieve any person of any liability incurred as a result of furnishing health care to the resident. No person furnishing information, data, reports, or records to the committee with respect to any resident of the developmental center is, by reason of furnishing the information, data, reports, or records, liable in damages to any resident, or answerable for willful violation of a privileged or confidential communication. No member of the committee is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 281

HOUSE BILL NO. 1025
(Legislative Council)
(Interim Budget Committee on Government Services)

DEVELOPMENTAL CENTER SERVICES SALE

AN ACT to authorize the state developmental center to sell services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Institutional sale of services. Subject to approval of the budget section of the legislative council, the state developmental center may provide any service not otherwise authorized by law under contract with a governmental or nongovernmental person. The state developmental center shall determine the rates for services provided. The budget section may approve the provision of a service under this section only after determining that the service is not otherwise being provided by either the private or public sector.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 282

HOUSE BILL NO. 1095
(Human Services Committee)
(At the request of the Department of Human Services)

DEVELOPMENTAL CENTER CARE REPAYMENT

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to claims for repayment of the cost of care at the developmental center at Grafton.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Statute of limitations not bar to recovery. No statute of limitations or similar statute or the doctrine of laches may bar the recovery of costs of care furnished under this chapter. It is not necessary to bill currently any person for those accounts determined to be inactive, currently uncollectible, or for which it has been determined as provided by law that there is no present ability to pay. Current billings may be made for amounts chargeable by law or for which it has been determined the responsible party presently has an ability to pay, but the manner of billing may not affect the total amount due. This section applies to claims for the cost of care furnished on or after July 1, 1961.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 283

SENATE BILL NO. 2115
(Human Services Committee)
(At the request of the Department of Human Services)

SHELTERED WORKSHOPS

AN ACT to repeal chapter 25-15 of the North Dakota Century Code, relating to sheltered workshops for the handicapped.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 25-15 of the North Dakota Century Code is repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 284

HOUSE BILL NO. 1274
(Representatives Dorso, Nelson, Rydell)
(Senators Holmberg, Nalewaja, Langley)

INVESTMENT RETURN FOR DEVELOPMENTALLY DISABLED FACILITY

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

Maximum annual return on investment. For-profit institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt over the original asset cost and must be determined as follows:

Percent debt to asset	Return
51 to 80 percent -	2 percent return on original cost of fixed assets.
0 to 50 percent -	3 percent return on original cost of fixed assets.

Approved April 20, 1993
Filed April 20, 1993

INSURANCE

CHAPTER 285

HOUSE BILL NO. 1169
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

FUNDS UNDER INSURANCE COMMISSIONER

AN ACT to create and enact a new section to chapter 299 of the 1991 Session Laws of North Dakota, relating to the petroleum tank release compensation fund; and to amend and reenact subsection 4 of section 26.1-21-01, subsection 5 of section 26.1-22-01, sections 26.1-22-06, and 26.1-22-21 of the North Dakota Century Code and section 20 of chapter 299 of the 1991 Session Laws of North Dakota, relating to the state bonding fund, petroleum tank release compensation fund, and fire and tornado fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 299 of the 1991 Session Laws of North Dakota is created and enacted as follows:

Investment of fund. Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10.

SECTION 2. AMENDMENT. Subsection 4 of section 26.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Political subdivision" means ~~a county, city, township, school district or park district, or any other unit of local government~~ all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

SECTION 3. AMENDMENT. Subsection 5 of section 26.1-22-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Political subdivision" ~~includes a county, city, township, school district, or park district of this state~~ means all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

SECTION 4. AMENDMENT. Section 26.1-22-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law. The commissioner shall adopt guidelines in

determining insurable values to assist state agencies and institutions and political subdivisions in determining whether to select indirect loss coverage. Notwithstanding any other provision of this chapter, the expenses for necessary loss prevention inspections and rating inspections for the purpose of determining the proper premium rate to be applied to the property insured by the fund must be paid out of the fund.

SECTION 5. AMENDMENT. Section 26.1-22-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-21. Insurance required - Excess loss reinsurance. The commissioner shall procure and shall keep in force, an excess loss reinsurance contract naming the fund as the reinsured. The reinsurance contract must meet the following minimum specifications:

1. Reimburse the fund for all losses in excess of one million dollars incurred by the fund under policies issued by the fund and arising out of each occurrence of a peril included in the fund policies.

2. The limit of liability of such reinsurance contract must be no less than one hundred million dollars for each loss occurrence ~~and one hundred million dollars as respects all loss occurrences during each twelve-month period~~.

3. A sixty-day cancellation notice.

4. The quoted rate must be the guaranteed rate for the two-year bid period.

The cost of the excess loss reinsurance must be paid out of the premium income of the fund. This excess loss reinsurance must be procured by the commissioner and the fund only through bids as hereinafter provided and must be written only by a company or companies authorized to do business within this state. The contract must be negotiated with and countersigned by a licensed North Dakota resident insurance agent. On or before the third Monday in June of each odd-numbered year the commissioner shall publish in the official newspaper of Burleigh County a notice that on the last Monday in June of that year the commissioner will accept bids at the commissioner's office in the state capitol. A copy of the notice must be posted at the office of the fund. A copy of the notice must be mailed to each insurance company licensed to write fire insurance in this state. On the last Monday in June of each odd-numbered year, the commissioner, with the approval of the industrial commission, shall contract for the excess loss reinsurance with the company or group of companies submitting the lowest and best bid for the two-year period commencing on the ensuing first day of August. The commissioner, with the approval of the industrial commission, may disregard this section after the commissioner and the commission have studied the available bids for the reinsurance required by this section.

SECTION 6. AMENDMENT. Section 20 of chapter 299 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 20. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 286

SENATE BILL NO. 2495
(Senators Mutch, Naaden)
(Representative Gorder)

PETROLEUM TANK DEFINITION

AN ACT to amend and reenact subsection 13 of section 2 of chapter 299 of the 1991 Session Laws of North Dakota, relating to the definition of "tank" for the purpose of the petroleum release compensation fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 2 of chapter 299 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

13. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:

    a. Tanks owned by the federal government~~;~~.

    b. Tanks used for the transportation of petroleum~~; and~~.

    c. A pipeline facility, including gathering lines, regulated under:

        (1) The Natural Gas Pipeline Safety Act of 1968.

        (2) The Hazardous Liquid Pipeline Safety Act of 1979.

        (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.

    d. ~~A~~ An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this Act.

    e. A tank used for storing heating oil for consumptive use on the premises where stored.

    f. A surface impoundment, pit, pond, or lagoon.

    g. A flowthrough process tank.

    h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.

i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

j. A tank used for the storage of propane.

k. A tank used to fuel rail locomotives or surface coal mining equipment.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 287

HOUSE BILL NO. 1167
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE COMMISSIONER AUTHORITY

AN ACT to create and enact section 26.1-26-42.1 of the North Dakota Century Code, relating to revocation of nonresident license; and to amend and reenact sections 26.1-01-03.1 and 26.1-26-08 of the North Dakota Century Code, relating to cease and desist authority of the commissioner of insurance and licensing of partnerships or corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-03.1. Cease and desist authority - Hearing - Failure to appear. The commissioner may issue an order to cease and desist and notice of opportunity for hearing when it appears that any person is engaged in an act or practice which violates or may lead to a violation of this title. ~~The commissioner shall provide written notice to the person named in the order stating the time and place of the hearing on the matter and setting forth the alleged violation.~~ Any party aggrieved by the commissioner's order may make written application for a hearing on the order within thirty days of the date of the order. The application for a hearing must briefly state the respects in which the applicant is aggrieved by the order and the grounds for relief to be relied upon at the hearing. A hearing must be held not later than ten days after ~~the issuance of the order~~ an application for hearing is received unless a delay is requested by all persons named in the order. The commissioner shall, within thirty days after the ~~issuance of the cease and desist order~~ hearing, issue an order vacating the cease and desist order or making the cease and desist order permanent, as the facts require. The failure of any named person to appear at any proper hearing under this section after receiving notice of the hearing will cause that person to be in default and the allegations contained in the cease and desist order may be deemed to be true and may be used against the person at the hearing. If no civil monetary penalty is otherwise provided by law, the offender is, after hearing by the commissioner, subject to payment of an administrative monetary penalty of up to ten thousand dollars. If no hearing is requested by written application, the commissioner's order becomes permanent.

SECTION 2. AMENDMENT. Section 26.1-26-08 of the North Dakota Century Code is amended and reenacted as follows:

[1] **26.1-26-08. Licensing of partnership or corporation - Notice of change of individuals.** A partnership or corporation ~~may be licensed as~~ engaging in the

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[1] NOTE: Section 26.1-26-08 was also amended by section 29 of Senate Bill No. 2223, chapter 54.

activities of an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker must be licensed as such. Every member of the partnership and every officer, director, stockholder, and employee of the corporation personally engaged in this state in soliciting or negotiating policies of insurance must be registered with the commissioner, and each member, officer, director, stockholder, or employee must also be licensed. Within a reasonable time after the transfer of ownership of a partnership or corporation or after receipt of a properly completed application from a partnership or corporation for a license as an insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker, the commissioner may conduct investigations and propound interrogatories to satisfy the commissioner that the owners, stockholders, partners, or members of the partnership or corporation are competent, trustworthy, financially responsible, and of good personal and business reputation. The required license fee must be paid for the partnership or corporation and for each individual registered. The partnership or corporate licensee shall within ten business days notify the commissioner of every change relative to the individuals registered under the partnership or corporation. This section does not apply to a management association, partnership, or corporation whose operations do not entail the solicitation of insurance from the public. Every partnership or corporation subject to this section must be licensed by January 1, 1994.

SECTION 3. Section 26.1-26-42.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-42.1. Revocation of nonresident license. Nothwithstanding the provisions of subsection 13 of section 26.1-26-42, any nonresident license issued pursuant to this chapter may be suspended or revoked without notice and hearing to the licensee and without proceeding in conformity with chapter 28-32, upon evidence in the form of a certified copy that the authority which issued the resident license to the North Dakota nonresident licensee has revoked or suspended the resident license.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 288

HOUSE BILL NO. 1037
(Legislative Council)
(Interim Finance and Taxation Committee)

INSURANCE REPORTING OF FIRE DISTRICTS

AN ACT to require fire, allied lines, and multiple peril insurance applications to include a statement of the fire protection district in which the insured property is located; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Fire district maps - Insurance applications to show fire district in which property is located - Penalty. Before December first of each year, the commissioner of insurance shall publish maps of the fire districts of the state for use by insurers under this section for the following calendar year. The state firemen's association and the state fire marshal shall assist the commissioner of insurance in preparing the maps. After December 31, 1993, no insurer may issue or renew a policy for fire, allied lines, multiple peril crop, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, or crop hail insurance coverage for property in this state unless the application identifies each fire district in which the insured property is located. The application must identify the property and insured value of the property located within each fire district if the policy provides coverage for property that is not all within a single district. For purposes of this section, "fire district" means rural fire protection district, city, or area served by a certified rural fire department. An insurer that is found by the commissioner to be in violation of this section is subject to a penalty of one hundred dollars for each such violation to be deposited in the insurance tax distribution fund. The commissioner of insurance may adopt rules necessary for administration of this section, including rules governing preparation, charges for, and use of maps under this section.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of $10,000, or so much of the sum as may be necessary, to the commissioner of insurance for the purpose of creating maps of the fire districts in the state for use in reporting as provided in section 1 of this Act for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 289

HOUSE BILL NO. 1168
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE COMPANY FEES AND TAXES

AN ACT to amend and reenact section 26.1-02-02 and subsections 3 and 5 of section 26.1-03-17 of the North Dakota Century Code, relating to the penalty for failure of an insurance company to pay the renewal fee for a certificate of authority and to insurance premium tax credits, penalties, and refunds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-02. Duty of commissioner before granting or renewing certificate of authority. The commissioner must be satisfied by examination and evidence that an insurance company is legally qualified to transact business in this state, including compliance with section 26.1-03-11, before granting a certificate of authority to the company to issue policies or make insurance contracts. A certificate of authority issued under this title remains in force in perpetuity if the required renewal fee is paid by April thirtieth of each year and the commissioner is satisfied that the documents required by section 26.1-03-11 have been filed, the statements and evidences of investment required of the company have been furnished, the required capital or surplus or both, securities, and investments remain secure, and all other requirements of law are met. Any company which neglects to pay the renewal fee by April thirtieth forfeits twenty-five dollars for each day's neglect.

SECTION 2. AMENDMENT. Subsections 3 and 5 of section 26.1-03-17 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any person failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of five percent of the amount of tax due or one hundred dollars, whichever is greater, plus interest of one percent per month on the unpaid tax for each month or fraction of a month of delay, excepting the first day after the tax became due, or twenty-five dollars per day, whichever is greater. Any person failing to file the appropriate tax statement required by rule if the tax is zero is subject to a penalty of twenty-five dollars per day for each day's neglect not to exceed five hundred dollars. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.

5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, ~~the amount of overpayment must be credited against any tax due, or to become due, under this section from~~ a refund may be issued to the taxpayer who made the erroneous payment. The refund is allowed as a credit against any tax due or to become due under

this section or as a cash refund, at the discretion of the commissioner. The taxpayer who made the erroneous payment shall present a claim for ~~credit~~ refund to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 290

SENATE BILL NO. 2456
(Senators Nalewaja, Jerome)
(Representatives Hokana, Timm)

REINSURANCE AND NONPROFIT HEALTH SERVICE CORPORATIONS

AN ACT to amend and reenact section 26.1-02-20, subsection 5 of section 26.1-17-05, and subsection 1 of section 26.1-31.2-01 of the North Dakota Century Code, relating to reinsurance, the authority of nonprofit health service corporations, and credit allowed a domestic ceding insurer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-20 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-20. Reinsurance permitted - Limitations. Except as otherwise provided by this section and section 26.1-02-22, any insurance company organized or admitted to transact business in this state, including a mutual company, may reinsure any part or all of any risk taken by it in any insurance company or insurer licensed in any state or any insurance company or insurer not so licensed or any nonprofit health service corporation whether or not licensed in this state provided it was approved or accepted by the commissioner, if that company or insurer or nonprofit health service corporation conforms to the same standards of solvency which would be required if, at the time the reinsurance is effected, it was licensed in this state. A county mutual insurance company also may reinsure with any other county mutual insurance company. No reinsurance, however, may be effected with any company disapproved therefor by written order of the commissioner filed in the commissioner's office. A domestic insurance company organized to engage in the business of life, accident, or health insurance may not reinsure its risks or any part thereof without complying with chapter 26.1-07.

[1] **SECTION 2. AMENDMENT.** Subsection 5 of section 26.1-17-05 of the North Dakota Century Code is amended and reenacted as follows:

5. Enter into contracts with other corporations, including insurance companies but only with prior approval of the insurance commissioner, or other entities in this state or in other states or possessions of the United States, or of the Dominion of Canada or other foreign countries so that:

   a. Reciprocity of benefits may be provided to subscribers.

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[1] NOTE: Section 26.1-17-05 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

b. Transfer of subscribers from one entity to another may be effected to conform to the subscriber's place of residence.

c. Uniform benefits may be provided for all employees and dependents of such employees of entities and other organizations transacting business in this state and elsewhere and a rate representing the composite experience of the areas involved may be charged for such employees and their dependents.

d. Health services may be provided for subscribers or policyholders of this or other corporations, including insurers, or entities for the purpose of ceding or accepting reinsurance or of jointly providing benefits, underwriting, pooling, mutualization, equalization, and other joint undertakings which the governing board may from time to time approve.

SECTION 3. AMENDMENT. Subsection 1 of section 26.1-31.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Credit must be allowed when the reinsurance is ceded to an assuming insurer or nonprofit health service corporation which is licensed to transact insurance or reinsurance in this state.

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

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 291

SENATE BILL NO. 2384
(Senator Lips)

INSURANCE FRAUD

AN ACT to define what constitutes insurance fraud, facilitate the detection of insurance fraud, allow reporting of suspected insurance fraud, grant immunity for reporting suspected insurance fraud, and require the restitution of fraudulently obtained insurance benefits; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this chapter:

1. "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or this state; the prosecuting attorney of any city, county, state, or of the United States or any subdivision thereof; or the commissioner of insurance.

2. "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments.

3. "Insurer" includes an authorized insurer, self-insurer, reinsurer, broker, producer, or any agent thereof.

4. "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other legal entity.

5. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.

6. "Statement" includes any notice statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bills for services, diagnosis, prescription, hospital or doctor records, X-rays, test result, or other evidence of loss, injury, or expense.

SECTION 2. Insurance fraud. "Fraudulent insurance act" includes:

1. Acts or omissions committed by any person who knowingly, or with an intent to injure, defraud, or deceive:

   a. Presents or causes to be presented to an insurer, reinsurer, producer, broker, or any agent thereof, any oral or written statement knowing that the statement contains any false or misleading information concerning any fact material to an application for the issuance of an insurance policy;

b. Prepares or assists, abets, solicits, or conspires with another to prepare or make any oral or written statement that is intended to be presented to any insurer in connection with, or in support of, any application for the issuance of an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to the application;

c. Presents or causes to be presented to any insurer, any oral or written statement including computer-generated documents as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or thing material to such claims; or

d. Assists, abets, solicits, or conspires with another to prepare or make any oral or written statement, including computer-generated documents, which is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim.

2. The act of a practitioner who knowingly and willfully assists, conspires with, or urges any person to fraudulently violate any of the provisions of this chapter, or any person or practitioner who due to such assistance, conspiracy, or urging by said practitioner, knowingly and willfully benefits from the proceeds derived from the use of the fraud.

SECTION 3. Disclosure of information.

1. Upon request by an insurer to an authorized agency or by an authorized agency to an insurer, the insurer, an agent authorized by the insurer to act on its behalf, or the authorized agency may release to the authorized agency or the insurer any or all information that is deemed important relating to any suspected insurance fraud. This information may include:

   a. Insurance policy information relevant to investigation, including any application for such a policy.

   b. Policy premium payment records that are available.

   c. History of previous claims made by the insured.

   d. Information relating to the investigation of the suspected insurance fraud, including statements of any person, proofs of loss, and notice of loss.

2. a. When an insurer knows or reasonably believes it knows the identity of a person whom it has reason to believe committed a fraudulent insurance act or has knowledge of a suspected fraudulent insurance act that is reasonably believed not to have been reported to an authorized agency, then for the purpose of notification and investigation, the insurer or an agent authorized by an insurer to act on its behalf may notify an authorized agency of the knowledge or belief and provide any additional information in accordance with subsection 1.

b. An insurer providing information to an authorized agency pursuant to subdivision a has the right to request in writing information in the possession or control of the authorized agency relating to the same suspected fraudulent insurance act of which the insurer notifies the authorized agency under subdivision a. The authorized agency shall provide the requested information within thirty days of the request.

3. In addition to providing information to an insurer under subdivision a of subsection 2, the authorized agency provided with information pursuant to subsections 1 and 2 may release or provide the information to any other authorized agency.

4. Except as otherwise provided by law, any information furnished pursuant to this section is privileged and not a part of any public record. The evidence or information is not subject to subpoena duces tecum in a civil or criminal proceeding unless, after reasonable notice to any insurer, agent, and authorized agency which has an interest in the information, and a subsequent hearing, a court determines that the public interest and any ongoing investigation will not be jeopardized by obeyance of the subpoena or subpoena duces tecum.

SECTION 4. Immunity.

1. A person when acting without malice is not subject to liability by virtue of filing reports, or furnishing orally or in writing other information concerning any suspected, anticipated, or completed fraudulent insurance act, when the reports or information are provided to or received from any authorized agency, the national association of insurance commissioners, or any other not-for-profit organization established to detect and prevent insurance fraud, and their agents, employees, or designees.

2. Except in prosecution for perjury or insurance fraud, and in the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed producer or private person who cooperates with, furnishes evidence, or provides or receives information regarding any suspected fraudulent insurance act to or from an authorized agency, the national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts or who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to provide evidence or testimony is not subject to a criminal proceeding or to a civil penalty with respect to any act concerning which the person testifies to or produces relevant matter.

3. In the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed producer or private person who cooperates with, furnishes evidence, or provides information regarding any suspected fraudulent insurance act to an authorized agency, the national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts or who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to furnish evidence or provide testimony, is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature exists against

the person, for filing reports, providing information, or otherwise cooperating with an investigation or examination of any of these entities.

4. The authorized agency, the national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts and any employee or agent of any of these entities, when acting without malice is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature will lie against the person by virtue of the execution of official activities or duties of the entity by virtue of the publication of any report or bulletin related to the official activities or duties of the entity.

5. This section does not abrogate or modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person or entity.

SECTION 5. Penalties - Probation - Restitution.

1. A violation of section 2 of this Act is a class C felony if the value of any property or services retained exceeds five thousand dollars and a class A misdemeanor in all other cases. For purposes of this section, the value of any property and services must be determined in accordance with subsection 6 of section 12.1-23-05.

2. In the event that a practitioner is adjudicated guilty of a violation of section 2 of this Act, the court shall notify the appropriate licensing authority of this state of the adjudication. The appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against the practitioner.

3. Probation may not be granted to, nor may the imposition of a sentence be suspended, after the first adult conviction for a violation under section 2 of this Act and any subsequent conviction of the same.

4. The existence of any fact that would make a person ineligible for probation under this section must be alleged in the information or indictment, and:

   a. Admitted by the defendant in open court;

   b. Determined to be true at trial by a jury or the court; or

   c. By plea of guilty or nolo contendere.

5. In addition to any other punishment, a person who violates section 2 of this Act, must be ordered to make restitution to the insurer or to any other person for any financial loss sustained as a result of the violation of section 2 of this Act. The court shall determine the extent and method of restitution.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 292

SENATE BILL NO. 2231
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE LAW REVISIONS

AN ACT to create and enact sections 26.1-03-02.1, 26.1-03-19.1, 26.1-03-19.2, 26.1-03-19.3, 26.1-03-19.4, 26.1-03-19.5, 26.1-03-19.6, 26.1-03-19.7, chapter 26.1-06.2, a new section to chapter 26.1-10, a new subdivision to subsection 6 of section 26.1-10-05, chapter 26.1-18.1, a new subsection to section 26.1-26.3-06, chapter 26.1-26.5, a new subsection to section 26.1-31.1-02, section 26.1-35-01.1, a new subsection to section 26.1-46-01, two new subdivisions to subsection 7 of section 26.1-46-01, a new subdivision to subsection 3 of section 26.1-46-03, two new subsections to section 26.1-46-03, and section 26.1-46-08.1 of the North Dakota Century Code, relating to valuation of securities, examinations, administrative supervision, health maintenance organizations, managing general agents, business transacted with insurance broker controlled property and casualty insurer, reinsurance intermediaries, standard valuation law, and formation and operation of risk retention groups and purchasing groups; to amend and reenact section 26.1-05-04, subsection 5 of section 26.1-10-03, subsections 1, 2, 3, and 4 of section 26.1-10-04, subsection 8 of section 26.1-10-05, sections 26.1-12-08, 26.1-12-10, subsection 3 of section 26.1-26.3-01, subsection 6 of section 26.1-26.3-03, section 26.1-26.3-06, subdivision c of subsection 8 of section 26.1-31.1-01, subsection 1 of section 26.1-31.1-06, subsection 6 of section 26.1-31.1-07, section 26.1-31.1-10, subdivision d of subsection 2 of section 26.1-31.2-01, subdivisions b and d of subsection 4 of section 26.1-31.2-01, subsection 2 of section 26.1-31.2-02, sections 26.1-35-07, 26.1-35-08, subdivisions a and e of subsection 7 of section 26.1-46-01, subsection 10 of section 26.1-46-01, section 26.1-46-02, subsection 1 of section 26.1-46-03, sections 26.1-46-04, 26.1-46-06, 26.1-46-07, 26.1-46-08, and 26.1-46-09 of the North Dakota Century Code, relating to domestic companies, insurance holding company systems, mutual life companies, managing general agents, reinsurance intermediaries, reinsurance credit, standard valuation law, and formation and operation of risk retention groups and purchasing groups; and to repeal sections 26.1-03-02, 26.1-03-19, 26.1-03-20, 26.1-03-21, 26.1-12-17, chapters 26.1-18, and 26.1-26.2 of the North Dakota Century Code, relating to valuation of securities held by a company, financial examinations, risk limitations of mutual insurance companies, mutual insurance companies, health maintenance organizations, and business transacted with insurance broker controlled property and casualty insurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-03-02.1 of the North Dakota Century Code is created and enacted as follows:

26.1-03-02.1. Valuation of securities and other investments.

1. All securities and investments of insurance companies must be valued in accordance with published valuation standards of the national association of insurance commissioners including, but not limited to, the accounting practices and procedure manuals and publications by the valuation of securities office of the national association of insurance commissioners.

2. All investments of insurance companies authorized to do business in this state, for which no method of valuation has been otherwise provided, must be valued in the discretion of the commissioner at their fair market value, appraised value, or at amounts determined by the commissioner as their fair market value. If any valuation of an investment by an insurer appears to be an unreasonable estimate of its true value, the commissioner has the authority to cause the investment to be appraised, and the appraised value must be substituted as the true value. The appraisal must be made by two disinterested and competent persons, one to be appointed by the commissioner and one to be appointed by the insurer. In the event these two persons fail to agree, they shall appoint a third disinterested and competent person, and the estimate of the value of the investment, as arrived at by these three persons, must be substituted as the true value.

SECTION 2. Section 26.1-03-19.1 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.1. Examination of companies - Definitions. In sections 26.1-03-19.1 through 26.1-03-19.7, unless the context otherwise requires:

1. "Company" means any foreign or domestic insurance company as defined in section 26.1-02-01.

2. "Examiner" means any individual or firm having been authorized by the commissioner to conduct an examination under this chapter.

3. "Person" means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

SECTION 3. Section 26.1-03-19.2 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.2. Authority, scope, and scheduling of examinations.

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company whenever the commissioner in the commissioner's sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider the matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' financial condition and market conduct handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

2. For purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

3. In lieu of an examination under this chapter of any foreign insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, the reports may only be accepted if the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program, or the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

SECTION 4. Section 26.1-03-19.3 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.3. Conduct of examinations.

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue a letter appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ other guidelines or procedures as the commissioner may deem appropriate.

2. For the purposes of making any examination required or authorized by law, every company or person from whom information is sought, its officers, directors, trustees, and agents must provide to the examiners appointed under subsection 1, in any examination required or authorized by law, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, trustees, and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, trustees, or agents to submit to examination or to comply with any reasonable request of the examiners is grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority must be conducted pursuant to sections 26.1-01-03.1 and 26.1-11-09.

3. The commissioner or any of the commissioner's examiners have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

4. Qualified regular employees of the commissioner, or the commissioner's designated representatives acting as independent contract examiners under the direction of regular employees of the commissioner, shall conduct all examinations of an insurance company required or permitted by law to be conducted by the commissioner, whether or not the examinations are convention examinations called in accordance with rules promulgated by the national association of insurance commissioners. The commissioner may contract for and procure the services of financial and market conduct examiners and other or additional specialized technical or professional assistants, as independent contractors. None of the persons providing those services or assistance on a contract or fee basis may be in the classified service of the state.

5. Nothing contained in this chapter may be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination will be prima facie evidence in any legal or regulatory action by and before the commissioner of insurance.

6. Except as provided in subsections 5 and 6 of section 26.1-03-19.4, nothing contained in this chapter may be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

SECTION 5. Section 26.1-03-19.4 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.4. Examination reports.

1. All examination reports must be comprised of only facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and the conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. No later than sixty days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together

with a notice which must afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

   a. Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation;

   b. Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection 1 above; or

   c. Calling for an investigatory hearing with no less than twenty days notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

4. a. All orders entered pursuant to subdivision a of subsection 3, except those entered pursuant to section 26.1-01-03.1 or 26.1-11-09, must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. The company may, within thirty days of the entry of any such order, request a hearing to vacate or amend the order. This hearing must be conducted in compliance with chapter 28-32. The order must be served upon the company, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the company shall acknowledge receipt of the adopted report and related orders.

   b. Any hearing conducted under subdivision c of subsection 3 by the commissioner or authorized representative must be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to subdivision a of subsection 3.

5. a. Upon the adoption of a financial examination report under subdivision a of subsection 3, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of fifteen days except to the extent provided in subsection 2. Thereafter, the commissioner may open the report for

public inspection so long as no court of competent jurisdiction has stayed its publication.

b. Nothing contained in this code prevents or may be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report, or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

c. In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

6. a. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial examination made under this chapter must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subsection 5. Access may also be granted to the national association of insurance commissioners. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

b. For purposes of any other examination other than financial examinations required or authorized by law, all preliminary data, drafts, notes, impressions, memoranda, working papers, and work product generated by the commissioner or the person making an examination or inspection are confidential and not open for public inspection until the commissioner releases a final report concerning the examination or inspection or upon a declaration by the commissioner that the material is nonconfidential. If a declaration of nonconfidentiality is requested by any person and denied, the commissioner, in the denial, shall state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when it will be made public.

SECTION 6. Section 26.1-03-19.5 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.5. Conflict of interest. No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section must not be construed to automatically preclude an examiner from being:

1. A policyholder or claimant under an insurance policy.

2. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business.

3. An investment owner in shares of regulated diversified investment companies.

4. A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

SECTION 7. Section 26.1-03-19.6 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.6. Cost of examinations. For purposes of any examination authorized or required by law, the company being examined shall pay the same charge for the examination as is provided in section 26.1-01-07 for an official examination. The compensation to be paid to the employees of the commissioner is to be paid out of the appropriation for the commissioner's office. Any sums paid to the employees or to the commissioner by the company examined, as an examination fee or otherwise, is state money, and forthwith must be paid into the insurance regulatory trust fund. Any sums paid to the employee or the commissioner as expense money for the examiner may be paid directly to the employee, and no employee may charge or collect from the state any expenses incurred in connection with any examination for or during which expenses or any part thereof have been paid by any other person, firm, or corporation. However, the compensation and expenses paid for independent contract examiners must be paid directly by the company examined after approval by the commissioner.

SECTION 8. Section 26.1-03-19.7 of the North Dakota Century Code is created and enacted as follows:

26.1-03-19.7. Immunity from liability.

1. No cause of action arises, nor may any liability be imposed, against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

2. No cause of action arises, nor may any liability be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

3. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection 1.

4. A person identified in subsection 1 is entitled to an award of attorney's fees and costs if that person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

SECTION 9. AMENDMENT. Section 26.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-04. Capital stock and surplus requirements of domestic stock company - Exceptions. A stock insurance company may not be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. A domestic stock insurance company may not issue any insurance policy until at least fifty percent of the required capital stock, and all of the required surplus, has been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation. The commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter were less than the minimum requirements provided by this section, the stock insurance company shall increase its authorized and paid in capital stock and surplus to ~~a minimum of two hundred fifty thousand dollars.~~ the minimum requirements under this section according to the following schedule:

1. Capital of two hundred fifty thousand dollars and surplus of two hundred fifty thousand dollars by December 31, 1994.

2. Capital of three hundred seventy-five thousand dollars and surplus of three hundred seventy-five thousand dollars by December 31, 1995.

3. Capital of five hundred thousand dollars and surplus of five hundred thousand dollars by December 31, 1996.

Except as otherwise provided in this section, the total value of paid-in capital stock and surplus of a stock insurance company organized under the laws of this state may not at any time be depleted to an amount totaling less than one million dollars.

SECTION 10. Chapter 26.1-06.2 of the North Dakota Century Code is created and enacted as follows:

26.1-06.2-01. Definitions. As used in this chapter:

1. "Consent" means agreement to administrative supervision by the insurer.

2. "Exceeded its powers" means any of the following conditions:

   a. The insurer has refused to permit examination of its books, papers, accounts, records, or affairs by the commissioner, the commissioner's deputies, employees, or duly commissioned examiners.

   b. A domestic insurer has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer.

c. The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto.

d. The insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus.

e. The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner.

f. The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner, if approval is required by law, totally reinsured its entire outstanding business, or merged or consolidated substantially its entire property or business with another insurer.

g. The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state.

h. The insurer refused to comply with a lawful order of the commissioner.

3. "Insurer" means and includes every person engaged as indemnity, surety, or contractor in the business of insurance or of annuities. For purposes of this chapter, any other persons included under section 26.1-06.1-02 must be deemed to be insurers.

26.1-06.2-02. Scope. The provisions of this chapter apply to:

1. All domestic insurers.

2. Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of this chapter as regards such insurer.

26.1-06.2-03. Notice to comply with written requirements of commissioner - Noncompliance - Administrative supervision.

1. An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:

a. The insurer's condition renders the continuance of its business hazardous to the public or to its insureds.

b. The insurer appears to have exceeded its powers granted under its certificate of authority and applicable law.

c. The insurer has failed to comply with the applicable provisions of this title.

d. The business of the insurer is being conducted fraudulently.

e. The insurer gives its consent.

2. If the commissioner determines that the conditions set forth in subsection 1 exist, the commissioner shall:

   a. Notify the insurer of the commissioner's determination.

   b. Furnish to the insurer a written list of the requirements to abate this determination.

   c. Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of the chapter. The action by the commissioner is subject to review pursuant to chapter 28-32.

3. If placed under administrative supervision, the insurer has sixty days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this chapter.

4. If it is determined after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may extend the supervision period.

5. If it is determined that none of the conditions giving rise to the supervision exist, the commissioner shall release the insurer from supervision.

26.1-06.2-04. Confidentiality of certain proceedings and records.

1. Notwithstanding any other provision of law and except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the commissioner or the department relating to the supervision of any insurer are confidential.

2. The personnel of the department shall have access to these proceedings, hearings, notices, correspondence, reports, records, or information as permitted by the commissioner.

3. The commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records, or information to a department, agency, or instrumentality of this or another state or the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state or the United States.

4. The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors, or the general public.

5. This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

26.1-06.2-05. Prohibited acts during period of suspension. During the period of supervision, the commissioner or the commissioner's designated appointee

shall serve as the administrative supervisor. The commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the commissioner's appointed supervisor:

1. Dispose of, convey, or encumber any of its assets or its business in force.
2. Withdraw any of its bank accounts.
3. Lend any of its funds.
4. Invest any of its funds.
5. Transfer any of its property.
6. Incur any debt, obligation, or liability.
7. Merge or consolidate with another company.
8. Approve new premiums or renew any policies.
9. Enter into any new reinsurance contract or treaty.
10. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract, except for nonpayment of premiums due.
11. Release, pay, or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate, or contract.
12. Make any material change in management.
13. Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential.

26.1-06.2-06. Review and stay of action. During the period of supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under chapter 28-32.

26.1-06.2-07. Administrative election of proceedings. Nothing contained in this chapter precludes the commissioner from initiating judicial proceedings to place an insurer in conservation, rehabilitation, or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this chapter against the insurer.

26.1-06.2-08. Rules. The commissioner may adopt reasonable rules necessary for the implementation of this chapter.

26.1-06.2-09. Other laws - Conflicts - Meetings between the commissioner and the supervisor. Notwithstanding any other provision of law, the commissioner may meet with a supervisor appointed under this chapter and with the attorney or other representative of the supervisor, without the presence of any other person, at the

time of any proceeding or during the pendency of any proceeding held under authority of this chapter to carry out the commissioner's duties under this chapter or for the supervisor to carry out the duties under this chapter.

26.1-06.2-10. Immunity. There is no liability on the part of, and no cause of action of any nature may arise against, the commissioner or the department or its employees or agents for any action taken by them in the performance of their powers and duties under this chapter.

SECTION 11. A new section to chapter 26.1-10 of the North Dakota Century Code is created and enacted as follows:

Dividends and other distribution.

1. The board of directors of any company subject to this chapter may declare and the company may pay dividends and other distributions on its outstanding shares and cash, property, or its own shares and on its treasury stock in its own shares, subject to the following provisions:

   a. No dividend or other distribution may be declared or paid at any time except out of earned, as distinguished from contributed, surplus, nor when the surplus of the company is less than the surplus required by law for the kind or kinds of business authorized to be transacted by such company, nor when the payment of a dividend or other distribution would reduce its surplus to less than such amount.

   b. Except in the case of share dividends, surplus for determining whether dividends or other distributions may be declared may not include surplus arising from unrealized appreciation in value, or revaluation of assets, or from unrealized profits upon investments.

   c. No dividend or other distribution may be declared or paid contrary to any restriction contained in the articles of incorporation.

   d. No dividend or other distribution may be declared or paid contrary to section 26.1-10-05.

2. No payment may be made to policyholders by way of dividends unless the company possesses admitted assets in the amount of such payment in excess of its capital, minimum required surplus, and all liabilities.

SECTION 12. AMENDMENT. Subsection 5 of section 26.1-10-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply to:

   a. ~~Any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsection 1 of any voting security referred to in subsection 1 which, immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding.~~

   ~~b.~~ Any transaction which is subject to the provisions of chapter 26.1-07, dealing with the merger or consolidation of two or more insurance companies.

~~c.~~ b. Any offer, request, invitation, agreement, or acquisition which the commissioner by order has excepted as:

(1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurance company; or

(2) As otherwise not comprehended within the purposes of this section.

SECTION 13. AMENDMENT. Subsections 1, 2, 3, and 4 of section 26.1-10-04 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Every insurance company which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurance company subject to disclosure requirements and standards adopted by statute or rule in the jurisdiction of its domicile which are substantially similar to those contained in this section and section 26.1-10-05. Any insurance company subject to registration under this section shall register before August 31, 1981, or fifteen days after it becomes subject to registration, whichever is later, and annually thereafter by March first of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurance company which is a member of a holding company system not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of the domiciliary jurisdiction.

2. Every insurance company subject to registration shall file a registration statement on a form approved by the commissioner, which must contain current information about:

   a. The capital structure, general financial condition, ownership, and management of the insurance company and any person in control of the insurance company.

   b. The identity and relationship of every member of the insurance holding company system.

   c. The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between the insurance company and its affiliates:

      (1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurance company or of the insurance company by its affiliates.

      (2) Purchases, sales, or exchange of assets.

      (3) Transactions not in the ordinary course of business.

      (4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurance

company's assets to liability, other than insurance contracts entered into in the ordinary course of the insurance company's business.

(5) All management ~~and~~ agreements, service contracts, and all cost-sharing arrangements.

(6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

d. Any pledge of the insurance company's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

e. Other matters concerning transactions between registered insurance companies and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

3. No information need be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, or guarantees involving one-half of one percent or less of an insurance company's admitted assets as of December thirty-first next preceding are not material for purposes of this section.

4. ~~Each~~ In addition to the annual filing requirement under subsection 1, each registered insurance company shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms approved by the commissioner within fifteen days after the end of the month in which it learns of each change or addition; provided, however, that subject to ~~subsection 3~~ subsections 7, 8, and 9 of section 26.1-10-05, each registered insurance company shall report all dividends and other distributions to shareholders within ~~ten~~ five business days following the declaration and no less than ten business days prior to payment thereof.

SECTION 14. A new subdivision to subsection 6 of section 26.1-10-05 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

SECTION 15. AMENDMENT. Subsection 8 of section 26.1-10-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, where the fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of:

a. Ten percent of the insurance company's surplus as regards policyholders as of December thirty-first next preceding; or

b. The net gain from operations of the insurance company, if the company is a life insurance company, or the net ~~investment~~ income, if the company is not a life insurance company, not including realized capital gains, for the twelve-month period ending December thirty-first next preceding, but ~~may~~ shall not include pro rata distributions of any class of the insurance company's own securities.

~~In determining whether a dividend or distribution is extraordinary, an insurance company other than a life insurance company may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carryforward must be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.~~

SECTION 16. AMENDMENT. Section 26.1-12-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-08. License required - Prerequisites to issuance of license. A mutual insurance company organized under this chapter may not issue policies or transact any insurance business unless it holds a license from the commissioner authorizing the transaction of insurance business. The license may not be issued unless and until the company complies with the following conditions:

1. It must hold bona fide applications for insurance upon which it will issue simultaneously at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk.

2. ~~The "maximum single risk" may not exceed twenty percent of the admitted assets of the company, or three times the average risk, or one percent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining the maximum single risk.~~

~~3.~~ It must have collected a premium upon each application. All premiums must be held in cash or in securities in which insurance companies may invest, and in the case of fire insurance, must be equal to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars, and in any other kind of insurance as listed in section 26.1-12-11, to not less than five times the maximum single risk assumed nor less than ten thousand dollars.

~~4.~~ 3. It must maintain a surplus of at least one million dollars. However, for any company doing business only in this state, ~~except~~ if the minimum assets and surplus requirements ~~for the company~~ required by this subsection are more than the minimum requirements ~~provided by this subsection~~ at the time the company was ~~originally~~ issued ~~a license~~ its original certificate of authority to do business, the company may maintain assets and surplus which satisfy the requirements in effect at that time. For all other companies, if the minimum assets and surplus requirements required by this subsection are more than the minimum requirements required at the time the company was issued its original certificate of

authority, the company shall increase its surplus of assets over all liabilities according to the following schedule:

a. Two hundred fifty thousand dollars by December 31, 1994.

b. Five hundred thousand dollars by December 31, 1995.

c. Seven hundred fifty thousand dollars by December 31, 1996.

d. One million dollars by December 31, 1997.

SECTION 17. AMENDMENT. Section 26.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-10. Mutual life company - Amount of subscribed insurance required - Surplus required. A mutual life insurance company may not issue a policy until not less than two hundred thousand dollars of insurance in not less than two hundred separate risks have been subscribed for and entered on its books. The commissioner may not issue a certificate of authority for the transaction of business to the company unless it has a surplus of assets over all liabilities of at least one million dollars. A domestic mutual life insurance company shall maintain surplus of at least this amount. ~~If~~ However, for any company doing business only in this state, if the minimum asset and surplus requirements required by this section are more than the minimum requirements required at the time a company was issued its original certificate of authority, the company shall increase its assets and surplus to a minimum of one hundred thousand dollars. All other companies shall increase their surplus of assets over all liabilities according to the schedule set out in subsection 4 of section 26.1-12-08.

SECTION 18. Chapter 26.1-18.1 of the North Dakota Century Code is created and enacted as follows:

26.1-18.1-01. Definitions.

1. "Basic health care services" means the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory, and diagnostic and therapeutic radiological services.

2. "Capitated basis" means fixed per member per month payment or percentage of premium payment wherein the provider assumes the full risk for the cost of contracted services without regard to the type, value, or frequency of services provided. For purposes of this definition, capitated basis includes the cost associated with operating staff model facilities.

3. "Carrier" means a health maintenance organization, an insurer, a nonprofit hospital and medical service corporation, or other entity responsible for the payment of benefits or provision of services under a group contract.

4. "Copayment" means an amount an enrollee must pay in order to receive a specific service which is not fully prepaid.

5. "Deductible" means the amount an enrollee is responsible to pay out of pocket before the health maintenance organization begins to pay the costs associated with treatment.

6. "Enrollee" means an individual who is covered by a health maintenance organization.

7. "Evidence of coverage" means a statement of the essential features and services of the health maintenance organization coverage which is given to the subscriber by the health maintenance organization or by the group contract holder.

8. "Extension of benefits" means the continuation of coverage under a particular benefit provided under a contract following termination with respect to an enrollee who is totally disabled on the date of termination.

9. "Grievance" means a written complaint submitted in accordance with the health maintenance organization's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the health maintenance organization relative to the enrollee.

10. "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specified group. The group contract may include coverage for dependents.

11. "Group contractholder" means the person to which a group contract has been issued.

12. "Health maintenance organization" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for copayments or deductibles or both.

13. "Health maintenance organization producer" means an insurance agent or insurance broker, as defined in section 26.1-26-02, who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for that person, or a person who advertises or otherwise holds out to the public as such.

14. "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include dependents of the subscriber.

15. "Insolvent" or "insolvency" means that the organization has been declared insolvent and placed under an order of liquidation by a court of competent jurisdiction.

16. "Managed hospital payment basis" means agreements wherein the financial risk is primarily related to the degree of utilization rather than to the cost of services.

17. "Net worth" means the excess of total admitted assets over total liabilities, but the liabilities do not include fully subordinated debt.

18. "Participating provider" means a provider as defined in subsection 20 who, under an express or implied contract with the health maintenance organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving

payment, other than copayment or deductible, directly or indirectly from the health maintenance organization.

19. "Person" means any natural or artificial person including individuals, partnerships, associations, trusts, or corporations.

20. "Provider" means any physician, hospital, or other person licensed or otherwise authorized to furnish health care services.

21. "Replacement coverage" means the benefits provided by a succeeding carrier.

22. "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the health maintenance organization, or in the case of an individual contract, the person in whose name the contract is issued.

23. "Uncovered expenditures" means the costs to the health maintenance organization for health care services that are the obligation of the health maintenance organization, for which an enrollee may also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made that are acceptable to the commissioner.

26.1-18.1-02. Establishment of health maintenance organizations.

1. Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. No person may establish or operate a health maintenance organization in this state, without obtaining a certificate of authority under this chapter. A foreign corporation may qualify under this chapter, subject to its registration to do business in this state as a foreign corporation under section 10-22-01 and compliance with all provisions of this chapter and other applicable state laws.

2. Any health maintenance organization that has not previously received a certificate of authority to operate as a health maintenance organization as of the effective date of this Act shall submit an application for a certificate of authority under subsection 3 within thirty days of the effective date of this Act. Each applicant may continue to operate until the commissioner acts upon the application. In the event that an application is denied under section 26.1-18.1-03, the applicant must thereafter be treated as a health maintenance organization whose certificate of authority has been revoked.

3. Each application for a certificate of authority must be verified by an officer or authorized representative of the applicant, must be in a form prescribed by the commissioner, and must set forth or be accompanied by the following:

   a. A copy of the organizational documents of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto.

b. A copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant.

c. A list of the names, addresses, and official positions and biographical information on forms acceptable to the commissioner of the persons who are to be responsible for the conduct of the affairs and day-to-day operations of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers in the case of a corporation, or the partners or members in the case of a partnership or association.

d. A copy of any contract form made or to be made between any class of providers and the health maintenance organization and a copy of any contract made or to be made between third-party administrators, marketing consultants, or persons listed in subdivision c and the health maintenance organization.

e. A copy of the form of evidence of coverage to be issued to the enrollees.

f. A copy of the form of group contract, if any, which is to be issued to employers, unions, trustees, or other organizations.

g. Financial statements showing the applicant's assets, liabilities, and sources of financial support. Include both a copy of the applicant's most recent and regular certified financial statement and an unaudited current financial statement.

h. A financial feasibility plan that includes detailed enrollment projections, the methodology for determining premium rates to be charged during the first twelve months of operations certified by an actuary or other qualified person, a projection of balance sheets, cash flow statements showing any capital expenditures, purchase and sale of investments and deposits with the state, and income and expense statements anticipated from the start of operations until the organization has had net income for at least one year, and a statement as to the sources of working capital as well as any other sources of funding.

i. A power of attorney duly executed by the applicant, if not domiciled in this state, appointing the commissioner and the commissioner's successors in office, and duly authorized deputies, as the true and lawful attorney of the applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served.

j. A statement or map reasonably describing the geographic area or areas to be served.

k. A description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee complaints and grievances.

l. A description of the proposed quality assurance program, including the formal organizational structure, methods for developing criteria, procedures for comprehensive evaluation of the quality of care rendered to enrollees, and processes to initiate corrective action and reevaluation when deficiencies in provider or organizational performance are identified.

m. A description of the procedures to be implemented to meet the protection against insolvency requirements in section 26.1-18.1-12.

n. A list of the names, addresses, and license numbers of all providers with which the health maintenance organization has agreements.

o. Such other information as the commissioner may require to make the determinations required in section 26.1-18.1-03.

4. a. The commissioner may adopt rules as the commissioner deems necessary to the proper administration of this chapter to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the information, modifications, or amendments to the items described in subsection 3 to the commissioner, either for the commissioner's approval or for information only, prior to the effectuation of the modification or amendment, or to require the health maintenance organization to indicate the modifications to the commissioner at the time of the next succeeding site visit or examination.

b. Any modification or amendment for which the commissioner's approval is required is deemed approved unless disapproved within thirty days, provided that the commissioner may postpone the action for such further time, not exceeding an additional thirty days, as necessary for proper consideration.

26.1-18.1-03. Issuance of certificate of authority.

1. Upon receipt of an application for issuance of a certificate of authority, the commissioner shall issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and upon the commissioner being satisfied that:

a. The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations.

b. The health maintenance organization's proposed plan of operation meets the requirements of section 26.1-18.1-06.

c. The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles.

d. The health maintenance organization is in compliance with sections 26.1-18.1-12 and 26.1-18.1-14.

2. A certificate of authority may be denied only after the commissioner complies with the requirements of section 26.1-18.1-19.

26.1-18.1-04. Powers of health maintenance organizations.

1. The powers of a health maintenance organization include the following:

   a. The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization.

   b. Transactions between affiliated entities, including loans and the transfer of responsibility under all contracts between affiliates or between the health maintenance organization and its parent.

   c. The furnishing of health care services through providers, provider associations, or agents for providers which are under contract with or employed by the health maintenance organization.

   d. The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration.

   e. The contracting with an insurance company licensed in this state, or with a hospital or medical service corporation authorized to do business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

   f. The offering of other health care services, in addition to basic health care services. Nonbasic health care services may be offered by a health maintenance organization on a prepaid basis without offering basic health care services to any group or individual.

   g. The joint marketing of products with an insurance company licensed in this state or with a hospital or medical service corporation authorized to do business in this state as long as the company that is offering each product is clearly identified.

2. a. A health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in subdivisions a, b, or d of subsection 1 which may affect the financial soundness of the health maintenance organization. The commissioner shall disapprove the exercise of power only if in the commissioner's opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations.

   b. The commissioner may adopt rules exempting from the filing requirement of subdivision a those activities having a de minimis effect.

26.1-18.1-05. Fiduciary responsibilities.

1. Any director, officer, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of the organization is responsible for the funds in a fiduciary relationship to the organization.

2. If the commissioner deems it necessary for the security of the funds of a health maintenance organization, the commissioner may require an official bond of each officer and each employee of the organization in an amount not to exceed the sum of money for which each is accountable.

26.1-18.1-06. Quality assurance program.

1. The health maintenance organization shall establish procedures to assure that the health care services provided to enrollees will be rendered under reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice. The procedures must include mechanisms to assure availability, accessibility, and continuity of care.

2. The health maintenance organization must have an ongoing internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services, across all institutional and noninstitutional settings. The program must include, at a minimum, the following:

   a. A written statement of goals and objectives which emphasizes improved health status in evaluating the quality of care rendered to enrollees.

   b. A written quality assurance plan which describes the following:

      (1) The health maintenance organization's scope and purpose in quality assurance.

      (2) The organizational structure responsible for quality assurance activities.

      (3) Contractual arrangements, where appropriate, for delegation of quality assurance activities.

      (4) Confidentiality policies and procedures.

      (5) A system of ongoing evaluation activities.

      (6) A system of focused evaluation activities.

      (7) A system for credentialing providers and performing peer review activities.

      (8) Duties and responsibilities of the designated physician responsible for the quality assurance activities.

   c. A written statement describing the system of ongoing quality assurance activities including:

      (1) Problem assessment, identification, selection, and study.

      (2) Corrective action, monitoring, evaluation, and reassessment.

      (3) Interpretation and analysis of patterns of care rendered to individual patients by individual providers.

d. A written statement describing the system of focused quality assurance activities based on representative samples of the enrolled population which identifies method of topic selection, study, data collection, analysis, interpretation, and report format.

e. Written plans for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided.

3. The organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes must be available to the commissioner.

4. The organization shall ensure the use and maintenance of an adequate patient record system which will facilitate documentation and retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees.

5. Enrollee clinical records must be available to the commissioner or an authorized designee for examination and review to ascertain compliance with this section, or as deemed necessary by the commissioner. The clinical records are confidential and are not subject to section 44-04-18, except upon written consent for disclosure by the enrollee or the enrollee's authorized representative.

6. The organization shall establish a mechanism for periodic reporting of quality assurance program activities to the governing body, providers, and appropriate organization staff.

26.1-18.1-07. Requirements for group contract, individual contract, and evidence of coverage.

1. a. Every group and individual contractholder is entitled to a group or individual contract.

b. The contract may not contain provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, or which encourage misrepresentation as defined by chapter 26.1-04.

c. The contract must contain a clear statement of the following:

(1) Name and address of the health maintenance organization.

(2) Eligibility requirements.

(3) Benefits and services within the service area.

(4) Emergency care benefits and services.

(5) Out-of-area benefits and services, if any.

(6) Copayments, deductibles, or other out-of-pocket expenses.

(7) Limitations and exclusions.

(8) Enrollee termination.

(9) Enrollee reinstatement, if any.

(10) Claims procedures.

(11) Enrollee grievance procedures.

(12) Continuation of coverage.

(13) Conversion.

(14) Extension of benefits, if any.

(15) Coordination of benefits, if applicable.

(16) Subrogation, if any.

(17) Description of the service area.

(18) Entire contract provision.

(19) Term of coverage.

(20) Cancellation of group or individual contractholder.

(21) Renewal.

(22) Reinstatement of group or individual contractholder, if any.

(23) Grace period.

(24) Conformity with state law.

An evidence of coverage may be filed as part of the group contract to describe the provisions required in this subdivision.

2. In addition to those provisions required in subdivision c of subsection 1, an individual contract must provide for a ten-day period to examine and return the contract and have the premium refunded. If services were received during the ten-day period, and the person returns the contract to receive a refund of the premium paid, the person must pay for the services.

3. a. Every subscriber shall receive an evidence of coverage from the group contractholder or the health maintenance organization.

b. The evidence of coverage may not contain provisions or statements which are unfair, unjust, inequitable, misleading, deceptive, or which encourage misrepresentation as defined by chapter 26.1-04.

c. The evidence of coverage must contain a clear statement of the provisions required in subdivision c of subsection 1.

4. The commissioner may adopt rules establishing readability standards for individual contract, group contract, and evidence of coverage forms.

5. No group or individual contract, evidence of coverage, or amendment thereto, may be delivered or issued for delivery in this state, unless its form has been filed with and approved by the commissioner, as provided by sections 26.1-30-19 and 26.1-30-20.

6. The provisions set forth in sections 26.1-30-20 and 26.1-30-21 govern the approval and disapproval of forms required to be filed under this section.

7. The commissioner may require the submission of whatever relevant information the commissioner deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

26.1-18.1-08. Annual report.

1. Every health maintenance organization shall annually, on or before March first, file a report verified by at least two principal officers with the commissioner, covering the preceding calendar year. The report must be on forms prescribed by the commissioner. In addition, the health maintenance organization shall file by March first, unless otherwise stated:

   a. Audited financial statements on or before June first.

   b. A list of the providers who have executed a contract that complies with subdivision a of subsection 4 of section 26.1-18.1-12.

   c. (1) A description of the grievance procedures.

      (2) The total number of grievances handled through the procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.

2. The commissioner may require additional reports as are deemed necessary and appropriate to enable the commissioner to carry out the commissioner's duties under this chapter.

26.1-18.1-09. Information to enrollees or subscribers.

1. The health maintenance organization shall provide to its subscribers a list of providers upon enrollment and reenrollment.

2. Every health maintenance organization shall provide within thirty days to its subscribers notice of any material change in the operation of the organization that will affect them directly.

3. An enrollee must be notified in writing by the health maintenance organization of the termination of the primary care provider who provided health care services to that enrollee. The health maintenance organization shall provide assistance to the enrollee in transferring to another participating primary care provider.

4. The health maintenance organization shall provide to subscribers information on how services may be obtained, where additional information on access to services can be obtained, and a telephone number where the enrollee can contact the health maintenance organization, at no cost to the enrollee.

26.1-18.1-10. Grievance procedures.

1. Every health maintenance organization shall establish and maintain a grievance procedure which has been approved by the commissioner to provide procedures for the resolution of grievances initiated by enrollees. The health maintenance organization shall maintain records regarding grievances received since the date of its last examination of the grievances.

2. The commissioner may examine the grievance procedures.

26.1-18.1-11. Investments. With the exception of investments made in accordance with subdivision a of subsection 1 of section 26.1-18.1-04, the funds of a health maintenance organization may be invested only in those investments authorized to be made by domestic insurance companies of this state.

26.1-18.1-12. Protection against insolvency.

1. Net worth requirements.

a. Before issuing any certificate of authority, the commissioner shall require that the health maintenance organization have an initial net worth of one million dollars and shall thereafter maintain the minimum net worth required under subdivision b.

b. Except as provided in subdivisions c and d, every health maintenance organization must maintain a minimum net worth equal to the greater of:

(1) One million dollars;

(2) Two percent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars of premium and one percent of annual premium on the premium in excess of one hundred fifty million dollars;

(3) An amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner; or

(4) An amount equal to the sum of:

(a) Eight percent of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis as reported on the most recent financial statement filed with the commissioner; and

(b) Four percent of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the commissioner.

c. A health maintenance organization licensed before the effective date of this Act and licensed only in this state must maintain the minimum requirements which are in effect at the time this chapter became law.

d. (1) In determining net worth, no debt may be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. Any interest obligation relating to the repayment of any subordinated debt must be similarly subordinated.

(2) The interest expenses relating to the repayment of any fully subordinated debt must be considered covered expenses.

(3) Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the commissioner, may not be considered a liability and must be recorded as equity.

2. Deposit requirements.

a. Unless otherwise provided below, each health maintenance organization shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than three hundred thousand dollars.

b. A health maintenance organization that is licensed only in this state and is in operation on the effective date of this Act shall make a deposit equal to one hundred thousand dollars.

c. The deposit shall be an admitted asset of the health maintenance organization in the determination of net worth.

d. All income from deposits is an asset of the organization. A health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities must be approved by the commissioner before being deposited or substituted.

e. The deposit must be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of health care services to enrollees of a health maintenance organization that is in rehabilitation or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the health maintenance organization is placed in receivership or liquidation, the deposit is an asset subject to the provisions of the liquidation act.

f. The commissioner may reduce or eliminate the deposit requirement if the health maintenance organization deposits with the state treasurer, insurance commissioner, or other official body of the state or jurisdiction of domicile for the protection of all subscribers and enrollees, wherever located, of the health maintenance organization, cash, acceptable securities or surety, and delivers to the commissioner a certificate to the effect, duly authenticated by the appropriate state official holding the deposit.

3. Liabilities. Every health maintenance organization shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of the claims. The liabilities must be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization.

4. Hold harmless.

   a. Every contract between a health maintenance organization and a participating provider of health care services must be in writing and must set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the contract, the subscriber or enrollee is not liable to the provider for any sums owed by the health maintenance organization.

   b. In the event that the participating provider contract has not been reduced to writing as required by this subsection or that the contract fails to contain the required prohibition, the participating provider may not collect or attempt to collect from the subscriber or enrollee sums owed by the health maintenance organization.

   c. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or enrollee to collect sums owed by the health maintenance organization.

5. Continuation of benefits. The commissioner shall require that each health maintenance organization have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering a plan, the commissioner may require:

   a. Insurance to cover the expenses to be paid for continued benefits after an insolvency.

   b. Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrollee's discharge from inpatient facilities.

   c. Insolvency reserves.

   d. Acceptable letters of credit.

   e. Any other arrangements to assure that benefits are continued as specified above.

6. Notice of termination. An agreement to provide health care services between a provider and a health maintenance organization must require that

if the provider terminates the agreement, the provider shall give the organization at least sixty days' advance notice of termination.

26.1-18.1-13. Uncovered expenditures insolvency deposit.

1. If at any time uncovered expenditures exceed ten percent of total health care expenditures, a health maintenance organization shall place an uncovered expenditures insolvency deposit with the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, cash or securities that are acceptable to the commissioner. The deposit must at all times have a fair market value in an amount of one hundred twenty percent of the health maintenance organization's outstanding liability for uncovered expenditures for enrollees in this state, including incurred but not reported claims, and must be calculated as of the first day of the month and maintained for the remainder of the month. If a health maintenance organization is not otherwise required to file a quarterly report, it shall file a report within forty-five days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.

2. The deposit required under this section is in addition to the deposit required under section 26.1-18.1-12 and is an admitted asset of the health maintenance organization in the determination of net worth. All income from the deposits or trust accounts is an asset of the health maintenance organization and may be withdrawn from the deposit or account quarterly with the approval of the commissioner.

3. A health maintenance organization that has made a deposit may withdraw that deposit or any part of the deposit if a substitute deposit of cash or securities of equal amount and value is made, the fair market value exceeds the amount of the required deposit, or the required deposit under subsection 1 is reduced or eliminated. Deposits, substitutions, or withdrawals may be made only with the prior written approval of the commissioner.

4. The deposit required under this section is in trust and may be used only as provided under this section. The commissioner may use the deposit of an insolvent health maintenance organization for administrative costs associated with administering the deposit and payment of claims of enrollees of this state for uncovered expenditures in this state. Claims for uncovered expenditures must be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining must be paid into the liquidation or receivership of the health maintenance organization.

5. The commissioner may by regulation prescribe the time, manner, and form for filing claims under subsection 4.

6. The commissioner may by rule or order require health maintenance organizations to file annual, quarterly, or more frequent reports as the commissioner deems necessary to demonstrate compliance with this section.

The commissioner may require that the reports include liability for uncovered expenditures as well as an audit opinion.

26.1-18.1-14. Enrollment period and replacement coverage in the event of insolvency.

1. Enrollment period.

a. In the event of an insolvency of a health maintenance organization, upon order of the commissioner all other carriers that participated in the enrollment process with the insolvent health maintenance organization at a group's last regular enrollment period shall offer the group's enrollees of the insolvent health maintenance organization a thirty-day enrollment period commencing upon the date of insolvency. Each carrier shall offer the enrollees of the insolvent health maintenance organization the same coverages and rates that it had offered to the enrollees of the group at its last regular enrollment period.

b. If no other carrier had been offered to some groups enrolled in the insolvent health maintenance organization, or if the commissioner determines that the other health benefit plans lack sufficient health care delivery resources to assure that health care services will be available and accessible to all of the group enrollees of the insolvent health maintenance organization, then the commissioner shall allocate equitably the insolvent health maintenance organization's group contracts for the groups among all health maintenance organizations which operate within a portion of the insolvent health maintenance organization's service area, taking into consideration the health care delivery resources of each health maintenance organization. Each health maintenance organization to which a group or groups are so allocated shall offer the group or groups the health maintenance organization's existing coverage which is most similar to each group's coverage with the insolvent health maintenance organization at rates determined in accordance with the successor health maintenance organization's existing rating methodology.

c. The commissioner shall also allocate equitably the insolvent health maintenance organization's nongroup enrollees which are unable to obtain other coverage among all health maintenance organizations which operate within a portion of the insolvent health maintenance organization's service area, taking into consideration the health care delivery resources of each health maintenance organization. Each health maintenance organization to which nongroup enrollees are allocated shall offer nongroup enrollees the health maintenance organization's existing coverage for individual or conversion coverage as determined by the type of coverage in the insolvent health maintenance organization at rates determined in accordance with the successor health maintenance organization's existing rating methodology. Successor health maintenance organizations which do not offer direct nongroup enrollment may aggregate all of the allocated nongroup enrollees into one group for rating and coverage purposes.

2. Replacement coverage.

a. "Discontinuance" means the termination of the contract between the group contractholder and a health maintenance organization due to the insolvency of the health maintenance organization, and does not refer to the termination of any agreement between any individual enrollee and the health maintenance organization.

b. Any carrier providing replacement coverage with respect to group hospital, medical, or surgical expense or service benefits within a period of sixty days from the date of discontinuance of a prior health maintenance organization contract or policy providing hospital, medical, or surgical expense or service benefits shall immediately cover all enrollees who were validly covered under the previous health maintenance organization contract or policy at the date of discontinuance and who would otherwise be eligible for coverage under the succeeding carrier's contract, regardless of any provisions of the contract relating to active employment or hospital confinement or pregnancy.

c. Except to the extent benefits for the condition would have been reduced or excluded under the prior carrier's contract or policy, no provision in a succeeding carrier's contract of replacement coverage which would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits preexisted the effective date of the succeeding carrier's contract may be applied with respect to those enrollees validly covered under the prior carrier's contract or policy on the date of discontinuance.

26.1-18.1-15. Filing requirements for rating information.

1. No premium rate may be used until either a schedule of premium rates or methodology for determining premium rates has been filed with and approved by the commissioner.

2. Either a specific schedule of premium rates, or a methodology for determining premium rates, must be established in accordance with actuarial principles for various categories of enrollees, provided that the premium applicable to an enrollee may not be individually determined based on the status of the enrollee's health. However, the premium rates may not be excessive, inadequate, or unfairly discriminatory. A certification by a qualified actuary or other qualified person acceptable to the commissioner as to the appropriateness of the use of the methodology, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

3. The commissioner shall approve the schedule of premium rates or methodology for determining premium rates if the requirements of subsection 2 are met. The procedures set forth in sections 26.1-30-20 and 26.1-30-21 govern the approval and disapproval of rating information required to be filed under this section.

26.1-18.1-16. Regulation of health maintenance organization producers.

1. The commissioner may adopt rules necessary to provide for the licensing of health maintenance organization producers. The rules must establish:

a. The requirements for licensure of resident health maintenance organization producers.

b. The conditions for entering into reciprocal agreements with other jurisdictions for the licensure of nonresident health maintenance organization producers.

c. Any examination, prelicensing, or continuing education requirements.

d. The requirements for registering and terminating the appointment of health maintenance organization producers.

e. Any requirements for registering any assumed names or office locations in which a health maintenance organization producer does business.

f. The conditions for health maintenance organization producer license renewal.

g. The grounds for denial, refusal, suspension, or revocation of a health maintenance organization producer's license.

h. Any required fees for the licensing activities of health maintenance organization producers.

i. Any other requirement or procedure and any form as may be reasonably necessary to provide for the effective administration of the licensing of health maintenance organization producers under this section.

2. None of the following may be required to hold a health maintenance organization producer license:

a. Any regular salaried officer or employee of a health maintenance organization who devotes substantially all of the person's time to activities other than the taking or transmitting of applications or membership fees or premiums for health maintenance organization membership, or who receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

b. Employers or their officers or employees or the trustees of any employee benefit plan to the extent that the employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of health maintenance organization memberships, provided that the employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the health maintenance organization issuing the health maintenance organization memberships;

c. Banks or their officers and employees to the extent that the banks, officers, and employees collect and remit charges by charging same against accounts of depositors on the orders of the depositor; or

d. Any person or the employee of any person who has contracted to provide administrative, management, or health care services to a health maintenance organization and who is compensated for those services by

the payment of an amount calculated as a percentage of the revenues, net income, or profit of the health maintenance organization, if that method of compensation is the sole basis for subjecting that person or the employee of the person to this chapter.

3. The commissioner may by rule exempt certain classes of persons from the requirement of obtaining a license:

a. If the functions they perform do not require special competence, trustworthiness, or the regulatory surveillance made possible by licensing; or

b. If other existing safeguards make regulation unnecessary.

26.1-18.1-17. Powers of insurers.

1. An insurance company licensed in this state, or a hospital or medical service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other law which may be inconsistent, any two or more insurance companies, hospital or medical service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

2. Notwithstanding any provision of insurance and hospital or medical service corporation laws, an insurer or a hospital or medical service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. The enrollees of a health maintenance organization constitute a permissible group under the laws. Among other things, under the contracts, the insurer or hospital or medical service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers.

26.1-18.1-18. Examinations.

1. The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom the organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every five years.

2. Every health maintenance organization and provider shall submit its books and records for the examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the commissioner may administer oaths to, and examine the officers and agents of, the health maintenance organization and the principals of the providers concerning their business.

3. The expenses of examinations under this section must be assessed against the health maintenance organization being examined and remitted to the commissioner.

4. In lieu of the examination, the commissioner may accept the report of an examination made by the commissioner of another state.

26.1-18.1-19. Suspension or revocation of certificate of authority.

1. Any certificate of authority issued under this chapter may be suspended or revoked, and any application for a certificate of authority may be denied, if the commissioner finds that any of these conditions exist:

   a. The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under section 26.1-18.1-02, unless amendments to the submissions have been filed with and approved by the commissioner.

   b. The health maintenance organization issues an evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of sections 26.1-18.1-07 and 26.1-18.1-15.

   c. The health maintenance organization does not provide or arrange for basic health care services.

   d. (1) The health maintenance organization does not meet the requirements of section 26.1-18.1-06; or

      (2) The health maintenance organization is unable to fulfill its obligations to furnish health care services.

   e. The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

   f. The health maintenance organization has failed to correct, within the time prescribed by subsection 3, any deficiency occurring due to the health maintenance organization's prescribed minimum net worth being impaired.

   g. The health maintenance organization has failed to implement the grievance procedures required by section 26.1-18.1-10 in a reasonable manner to resolve valid complaints.

   h. The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

   i. The continued operation of the health maintenance organization would be hazardous to its enrollees.

   j. The health maintenance organization has otherwise failed substantially to comply with this chapter.

2. In addition to or in lieu of suspension or revocation of a certificate of authority pursuant to this section, the applicant or health maintenance organization may be subjected to an administrative penalty of up to ten thousand dollars for each cause for suspension or revocation.

3. The following pertains when insufficient net worth is maintained:

   a. Whenever the commissioner finds that the net worth maintained by any health maintenance organization subject to the provisions of this chapter is less than the minimum net worth required to be maintained by section 26.1-18.1-12, the commissioner shall give written notice to the health maintenance organization of the amount of the deficiency and require filing with the commissioner a plan for correction of the deficiency acceptable to the commissioner, and correction of the deficiency within a reasonable time, not to exceed sixty days, unless an extension of time, not to exceed sixty additional days, is granted by the commissioner. Such a deficiency must be deemed an impairment, and failure to correct the impairment in the prescribed time is grounds for suspension or revocation of the certificate of authority or for placing the health maintenance organization in conservation, rehabilitation, or liquidation.

   b. Unless allowed by the commissioner, no health maintenance organization or person acting on its behalf may, directly or indirectly, renew, issue, or deliver any certificate, agreement, or contract of coverage in this state, for which a premium is charged or collected, when the health maintenance organization writing the coverage is impaired, and the fact of the impairment is known to the health maintenance organization or to the person. However, the existence of an impairment does not prevent the issuance or renewal of a certificate, agreement, or contract when the enrollee exercises an option granted under the plan to obtain a new, renewed, or converted coverage.

4. A certificate of authority must be suspended or revoked or an application or a certificate of authority denied or an administrative penalty imposed only after compliance with the requirements of this section.

   a. Suspension or revocation of a certificate of authority or the denial of an application or the imposition of an administrative penalty pursuant to this section must be by written order and must be sent to the health maintenance organization or applicant by certified mail. The written order must state the grounds, charges, or conduct on which suspension, revocation, or denial or administrative penalty is based. The health maintenance organization or applicant may in writing request a hearing within thirty days from the date of mailing of the order. If no written request is made, the order is final upon the expiration of said thirty days.

   b. If the health maintenance organization or applicant requests a hearing pursuant to this section, the commissioner shall issue a written notice of hearing and send it to the health maintenance organization or applicant by certified or registered mail stating:

(1) A specific time for the hearing, which may not be less than twenty nor more than thirty days after mailing of the notice of hearing; and

(2) A specific place for the hearing, which may be either in Bismarck, North Dakota, or in the county where the health maintenance organization's or applicant's principal place of business is located.

After the hearing, or upon failure of the health maintenance organization to appear at the hearing, the commissioner shall take whatever action the commissioner deems necessary based on written findings and shall mail the decision to the health maintenance organization or applicant. The action of the commissioner is subject to review under chapter 28-32, or other applicable statutory review process.

5. The provisions of chapter 28-32 apply to proceedings under this section to the extent they are not in conflict with subdivision b of subsection 4.

6. When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and may not engage in any advertising or solicitation whatsoever.

7. When the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It may engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit the further operation of the organization as the commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

26.1-18.1-20. Rehabilitation, liquidation, or conservation of health maintenance organizations.

1. Any rehabilitation, liquidation, or conservation of a health maintenance organization must be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and must be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in chapter 26.1-06; or when in the commissioner's opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

2. For purposes of determining the priority of distribution of general assets, claims of enrollees and enrollees' beneficiaries have the same

priority as established by chapter 26.1-06.1 for policyholders and beneficiaries of insureds of insurance companies. If an enrollee is liable to any provider for services provided pursuant to and covered by the health care plan, that liability has the status of an enrollee claim for distribution of general assets. Any provider who is obligated by statute or agreement to hold enrollees harmless from liability for services provided pursuant to and covered by a health care plan has a priority of distribution of the general assets immediately following that of enrollees and enrollees' beneficiaries as described herein, and immediately preceding the priority of distribution described in chapter 26.1-06.1.

26.1-18.1-21. Summary orders and supervision.

1. Whenever the commissioner determines that the financial condition of any health maintenance organization is such that its continued operation might be hazardous to its enrollees, creditors, or the general public, or that it has violated any provision of this chapter, the commissioner may, after notice and hearing, order the health maintenance organization to take action as may be reasonably necessary to rectify the condition or violation, including one or more of the following:

   a. Reduce the total amount of present and potential liability for benefits by reinsurance or other method acceptable to the commissioner.

   b. Reduce the volume of new business being accepted.

   c. Reduce expenses by specified methods.

   d. Suspend or limit the writing of new business for a period of time.

   e. Increase the health maintenance organization's capital and surplus by contribution.

   f. Take other steps as the commissioner may deem appropriate under the circumstances.

2. For purposes of this section, the violation by a health maintenance organization of any law of this state to which the health maintenance organization is subject must be deemed a violation of this chapter.

3. The commissioner may set uniform standards and criteria by rule for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public and to set standards for evaluating the financial condition of any health maintenance organization, which standards must be consistent with the purposes expressed in subsection 1.

4. The remedies and measures available to the commissioner under this section are in addition to, and not in lieu of, the remedies and measures available to the commissioner under the provisions of section 26.1-06.1-09.

26.1-18.1-22. Rulemaking authority. The commissioner may adopt reasonable rules necessary and proper to carry out the provisions of this chapter.

26.1-18.1-23. Confidentiality of medical information and limitation of liability.

1. Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from the person or from any provider by any health maintenance organization must be held in confidence and may not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter, or upon the express consent of the enrollee or applicant, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between the person and the health maintenance organization wherein the data or information is pertinent. A health maintenance organization is entitled to claim any statutory privileges against the disclosure which the provider who furnished the information to the health maintenance organization is entitled to claim.

2. A person who, in good faith and without malice, takes any action or makes any decision or recommendation as a member, agent, or employee of a health care review committee or who furnishes any records, information, or assistance to such a committee is not subject to liability for civil damages or any legal action in consequence of the action, nor is the health maintenance organization which established the committee or the officers, directors, employees, or agents of the health maintenance organization liable for the activities of any person. This section may not be construed to relieve any person of liability arising from treatment of a patient.

3. a. The information considered by a health care review committee and the records of their actions and proceedings is confidential and not subject to subpoena or order to produce except in proceedings before the appropriate state licensing or certifying agency, or in an appeal, if permitted, from the committee's findings or recommendations. No member of a health care review committee, or officer, director, or other member of a health maintenance organization or its staff engaged in assisting the committee, or any person assisting or furnishing information to the committee may be subpoenaed to testify in any judicial or quasi-judicial proceeding if the subpoena is based solely on the activities.

   b. Information considered by a health care review committee and the records of its actions and proceedings which are used pursuant to subdivision a of subsection 3 by a state licensing or certifying agency or in an appeal must be kept confidential and is subject to the same provision concerning discovery and use in legal actions as are the original information and records in the possession and control of a health care review committee.

4. To fulfill its obligations under section 26.1-18.1-06, the health maintenance organization shall have access to treatment records and other information pertaining to the diagnosis, treatment, or health status of any enrollee.

26.1-18.1-24. Acquisition of control of or merger of a health maintenance organization. No person may make a tender for or a request or invitation for

tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization, information required by section 26.1-10-03 and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner. Approval by the commissioner must be governed by section 26.1-10-03.

26.1-18.1-25. Coordination of benefits.

1. Health maintenance organizations are permitted, but not required, to adopt coordination of benefits provisions to avoid overinsurance and to provide for the orderly payment of claims when a person is covered by two or more group health insurance or health care plans.

2. If health maintenance organizations adopt coordination of benefits, the provisions must be consistent with the coordination of benefits provisions that are in general use in the state for coordinating coverage between two or more group health insurance or health care plans.

3. To the extent necessary for health maintenance organizations to meet their obligations as secondary carriers under the rules for coordination, health maintenance organizations shall make payments for services that are received from nonparticipating providers, provided outside their service areas, or not covered under the terms of their group contracts or evidence of coverage.

[1] **SECTION 19. AMENDMENT.** Subsection 3 of section 26.1-26.3-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Managing general agent" means any individual, partnership, or corporation which:

   a. ~~Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages~~ Manages all or part of the insurance business of an insurer including the management of a separate division, department, or underwriting office, and ~~acts~~

   b. Acts as an agent for the insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any

[1] NOTE: Section 26.1-26.3-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

one quarter or year~~, and who either~~ together with one or more of the following activities related to the business produced:

(1) Adjusts or pays claims in excess of an amount determined by the commissioner; or

(2) Negotiates reinsurance on behalf of the insurer.

~~b.~~ c. Notwithstanding the above, the following persons will not be considered as managing general agents for the purposes of this chapter:

(1) An employee of the insurer.

(2) A United States manager of the United States branch of an alien insurer.

(3) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to chapter 26.1-10, and whose compensation is not based on the volume of premiums written.

(4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

SECTION 20. A new subsection to section 26.1-26.3-06 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The decision, determination, or order of the commissioner pursuant to subsection 1 of section 26.1-26.3-06 is subject to judicial review pursuant to chapter 28-32.

[2] **SECTION 21. AMENDMENT.** Subsection 6 of section 26.1-26.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Appropriate underwriting guidelines including:

a. The maximum annual premium volume;

b. The basis of the rates to be ~~charges~~ charged;

c. The types of risks which may be written;

d. Maximum limits of liability;

e. Applicable exclusions;

f. Territorial limitations;

g. Policy cancellation provisions; and

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[2] NOTE: Section 26.1-26.3-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

h. The maximum policy period.

The insurer has the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.

SECTION 22. AMENDMENT. Section 26.1-26.3-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26.3-06. Penalties and liabilities.

1. If the commissioner ~~finds after a hearing conducted in accordance with chapter 28-32 that any person has violated any provision of~~ determines that the managing general agent or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, after notice and opportunity to be heard, the commissioner may order:

   a. For each separate violation, a penalty in an amount ~~of~~ not exceeding one thousand dollars;

   b. Revocation or suspension of the ~~agent's~~ producer's license; and

   c. ~~The managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.~~ If it was found that because of the material noncompliance that the insurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.

2. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to chapter 26.1-06.1, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with this chapter, or any rule or order adopted under this chapter, and the insurer suffered any loss or damage as a result of the material noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

~~2.~~ 3. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law.

~~3.~~ 4. Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

SECTION 23. Chapter 26.1-26.5 of the North Dakota Century Code is created and enacted as follows:

26.1-26.5-01. Definitions. As used in this chapter:

1. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial

regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

2. "Control" or "controlled" has the meaning ascribed in chapter 26.1-10.

3. "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly, by an insurance broker.

4. "Controlling insurance broker" means an insurance broker who, directly or indirectly, controls an insurer.

5. "Insurance broker" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, such person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

6. "Licensed insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property and casualty insurance business in this state. The following, inter alia, are not licensed insurers for the purposes of this chapter:

   a. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986 [Pub. L. No. 99-499, 100 Stat. 1613] and the Risk Retention Act [15 U.S.C. section 39-01 et seq.] and chapter 26.1-46.

   b. All residual market pools and joint underwriting authorities or associations.

   c. All captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

26.1-26.5-02. Applicability. This chapter applies to licensed insurers as defined in section 26.1-26.5-01, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the Insurance Holding Company Act, to the extent they are not superseded by this chapter, continue to apply to all parties within holding company systems subject to this chapter.

26.1-26.5-03. Minimum standards.

1. a. The provisions of this section apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling insurance broker is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September thirtieth of the prior year.

b. Notwithstanding subdivision a, the provisions of this section do not apply if:

(1) The controlling insurance broker places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and accepts insurance placements only from nonaffiliated insurance brokers, and not directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling insurance broker, an insurance broker controlled by the controlled insurer, or an insurance broker that is a subsidiary of the controlled insurer.

2. A controlled insurer may not accept business from a controlling insurance broker and a controlling insurance broker may not place business with a controlled insurer unless there is a written contract between the controlling insurance broker and the insurer specifying the responsibilites of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

a. The controlled insurer may terminate the contract for cause, upon written notice to the controlling insurance broker. The controlled insurer shall suspend the authority of the controlling insurance broker to write business during the pendency of any dispute regarding the cause for the termination.

b. The controlling insurance broker shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling insurance broker.

c. The controlling insurance broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

d. All funds collected for the controlled insurer's account must be held by the controlling insurance broker in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling insurance broker not required to be licensed in this state must be maintained in compliance with the requirements of the controlling insurance broker's domiciliary jurisdiction.

e. The controlling insurance broker shall maintain separately identifiable records of business written for the controlled insurer.

f. The contract may not be assigned, in whole or in part, by the controlling insurance broker.

g. The controlled insurer shall provide the controlling insurance broker with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling insurance broker shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by an insurance broker other than the controlling insurance broker.

h. The rates and terms of the controlling insurance broker's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by insurance brokers other than controlling insurance brokers. For purposes of this subdivision and subdivision g, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

i. If the contract provides that the controlling insurance broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subdivision a of subsection 4.

j. A limit on the controlling insurance broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling insurance broker when the applicable limit is approached and may not accept business from the controlling insurance broker if the limit is reached. The controlling insurance broker may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

k. The controlling insurance broker may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling insurance broker places with the controlled insurer, except that the controlling insurance broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

3. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

4. a. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April first of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of yearend, including incurred but not reported, on business placed by the insurance broker.

b. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the insurance broker, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling insurance brokers for placements of the same kinds of insurance.

26.1-26.5-04. Disclosure. The insurance broker, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the insurance broker and the controlled insurer, except that, if the business is placed through an insurance broker who is not a controlling insurance broker, the controlling insurance broker shall retain in his records a signed commitment from the insurance broker that the insurance broker is aware of the relationship between the insurer and the insurance broker and that the insurance broker has or will notify the insured.

26.1-26.5-05. Liability of controlling insurance broker in the event of insolvency of controlled insurer. If the commissioner has reason to believe that a controlling insurance broker has commited or is committing an act which could be determined to be a violation, and that the violation substantially contributed to the insolvency of a controlled insurer, the commissioner or receiver may maintain a civil action against the controlling insurance broker for all damages caused by the insurance broker's acts.

26.1-26.5-06. Administrative penalties and actions by the commissioner.

1. In addition to any other remedies provided herein, whenever it appears to the commissioner that a person has committed or is committing an act that could be determined to be a violation, the commissioner may institute a proceeding under chapter 28-32. After the hearing, the commissioner may order any or all of the following:

a. That the person permanently cease and desist from committing the acts found to be in violation of this chapter.

b. Payment of a penalty of not more than ten thousand dollars for each and every act or violation.

c. That the controlling insurance broker cease placing business with the controlled insurer.

2. If it is found, after hearing, that the controlling broker or any other person has not materially complied with this chapter and that the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

3. If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to chapter 26.1-06.1, and the receiver appointed under that order believes that the controlling insurance broker or any other person has not materially complied with this chapter, or any rule or order adopted hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

4. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law.

5. Nothing contained in this section is intended to or in any manner alters or affects the rights of policyholders, claimants, creditors, or other third parties.

26.1-26.5-07. Effective date. Within sixty days of the effective date of this Act, each controlled insurer and each controlling insurance broker must comply with the provisions of sections 26.1-26.5-03 and 26.1-26.5-04.

[3] **SECTION 24. AMENDMENT.** Subdivision c of subsection 8 of section 26.1-31.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

c. An underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer and ~~be~~ subject to chapter 26.1-10, and whose compensation is not based on the volume of premiums written.

SECTION 25. A new subsection to section 26.1-31.1-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Licensed attorneys at law of this state when acting in their professional capacity as such are exempt from this section.

SECTION 26. AMENDMENT. Subsection 1 of section 26.1-31.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

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[3] NOTE: Section 26.1-31.1-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

SECTION 27. AMENDMENT. Subsection 6 of section 26.1-31.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Jointly employ an individual who is employed by the reinsurer unless such reinsurance intermediary-manager is under common control with the reinsurer subject to chapter 26.1-10.

SECTION 28. AMENDMENT. Section 26.1-31.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-31.1-10. Penalties and liabilities.

1. ~~A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing, to be in violation of any provision of this chapter, shall~~ If the commissioner determines that the reinsurance intermediary or any other person has not materially complied with this chapter, or any rule or order adopted under this chapter, after notice and opportunity to be heard, the commissioner may order:

   a. For each separate violation, ~~pay~~ a penalty in an amount not exceeding five thousand dollars;

   b. ~~Be subject to revocation~~ Revocation or suspension of ~~its~~ the reinsurance intermediary's license; and

   c. If ~~a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation~~ it was found that because of the material noncompliance the insurer or reinsurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the reinsurer or insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the reinsurer or insurer and its policyholders and creditors or seek other appropriate relief.

2. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to chapter 26.1-06.1, and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with this chapter, or any rule or order adopted under this chapter, and the insurer suffered any loss or damage as a result of the material noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

3. Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in the insurance law.

~~3.~~ 4. Nothing contained in this chapter is intended to or may in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties ~~or confer any rights to such persons~~.

5. The decision, determination, or order of the commissioner pursuant to subsection 1 of this section is subject to judicial review pursuant to chapter 28-32.

SECTION 29. AMENDMENT. Subdivision d of subsection 2 of section 26.1-31.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

d. Files ~~each year by March first~~ annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either

(1) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or

(2) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit may be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

SECTION 30. AMENDMENT. Subdivisions b and d of subsection 4 of section 26.1-31.2-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision a, and which ~~is under the supervision of the department of trade and industry of the United Kingdom~~ has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust must be in an amount equal to the group's several liabilities attributable to business ~~written in the United States~~ ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group plus the group shall maintain a joint trusteed surplus of which one hundred million dollars must be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

d. No later than ~~March first~~ February twenty-eighth of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding yearend and shall certify the date of

termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty-first.

SECTION 31. AMENDMENT. Subsection 2 of section 26.1-31.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets ~~under this state's investment statutes~~.

SECTION 32. Section 26.1-35-01.1 of the North Dakota Century Code is created and enacted as follows:

26.1-35-01.1. Actuarial opinion of reserves. This section becomes operative at the end of the first full calendar year following the year of enactment.

1. Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

2. Actuarial analysis of reserves and assets supporting such reserves.

   a. Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection 1, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

   b. The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinon required by this section.

3. Requirement for opinion under subsection 2. Each opinion required by subsection 2, must be governed by the following provisions:

   a. A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

   b. If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by rule or is otherwise unacceptable to the commissioner, the commissioner may

engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

4. Requirement for all opinions. Every opinion must be governed by the following provisions:

a. The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994.

b. The opinion must apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

c. The opinion must be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

d. In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

e. For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.

f. Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

g. Disciplinary action by the commissioner against the company or the qualified actuary must be defined in rules by the commissioner.

h. Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, must be kept confidential by the commissioner and may not be made public and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted hereunder; provided, however, that the memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

SECTION 33. AMENDMENT. Section 26.1-35-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-07. Minimum aggregate reserves for life policies issued after June 30, 1977.

1. A company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after June 30, 1977, may not be less than the aggregate reserves calculated in accordance with the methods set forth in sections 26.1-35-05, 26.1-35-06, and 26.1-35-09 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

2. In no event may the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by section 26.1-35-01.1.

SECTION 34. AMENDMENT. Section 26.1-35-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-35-08. Calculation of minimum aggregate reserves by other standards. Reserves for all policies and contracts issued prior to July 1, 1977, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for the policies and contracts than the minimum reserves required by the laws in effect on June 30, 1977.

Reserves for any category of policies, contracts, or benefits, as established by the commissioner, issued on or after July 1, 1977, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this chapter, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies and contracts. Any company that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this chapter may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum provided in this chapter; provided, however, that for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by section 26.1-35-01.1 may not be deemed to be the adoption of a higher standard of valuation.

SECTION 35. A new subsection to section 26.1-46-01 of the North Dakota Century Code is created and enacted as follows:

"Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by any person who performs that work or any person who hires an independent contractor to perform that work, but includes liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

SECTION 36. Two new subdivisions to subsection 7 of section 26.1-46-01 of the North Dakota Century Code are created and enacted as follows:

Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state.

SECTION 37. AMENDMENT. Subdivisions a and e of subsection 7 of section 26.1-46-01 of the North Dakota Century Code are amended and reenacted as follows:

a. ~~The~~ For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

e. Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, reinsurance agreements, and investment policies.

SECTION 38. AMENDMENT. Subsection 10 of section 26.1-46-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Risk retention group" means any corporation or other limited liability association ~~formed under the laws of any state, Bermuda, or the Cayman Islands and which meets the qualifications for such groups as defined in the federal Product Liability Risk Retention Act of 1981 as amended.~~:

a. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

b. Which is organized for the primary purpose of conducting the activity described under subdivision a.

c. Which is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or, before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986.

d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

e. Which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group,

or has its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group.

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.

g. Whose activities do not include the provision of insurance other than:

(1) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

(2) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in business or activities so that the group or member meets the requirement described in subdivision f from membership in the risk retention group which provides such reinsurance.

h. The name of which includes the phrase "risk retention group".

SECTION 39. AMENDMENT. Section 26.1-46-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-02. Risk retention groups chartered in this state. A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this chapter, shall comply with all of the laws, rules, regulations, and requirements applicable to such insurers chartered and licensed in this state and with section 26.1-46-03 to the extent such requirements are not a limitation on laws, rules, regulations, or requirements of this state. Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners, an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners accounting practices and procedures manual. Before it may offer insurance in any state, each risk retention group doing business in this state ~~which has more than twenty five~~, except for a risk retention group chartered in this state which does business only in this state and which has fewer than twenty-six resident members or insureds, shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance. Immediately upon receipt of an application for charter in this state the risk retention group shall provide summary information concerning the filing to the national association of insurance commissioners including the name of the risk retention group, the identity of the initial members of the group, the identity of the individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the national

association of insurance commissioners. Providing notification to the national association of insurance commissioners is in addition to, and is not sufficient to satisfy, the requirements of this chapter.

SECTION 40. AMENDMENT. Subsection 1 of section 26.1-46-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notice of operations and designation of commissioner as agent. Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the national association of insurance commissioners all of the following:

   a. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subsection 10 of section 26.1-46-01.

   b. ~~For risk retention groups doing business in this state which have more than twenty-five resident members or insureds, a~~ A copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to its state of domicile; provided, however, that the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date.

   c. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 26.1-46-02 at the same time that the revision is submitted to the commissioner of its chartering state.

   d. A statement of registration, for which a filing fee must be determined by the commissioner, which designated the commissioner as its agent for the purpose of receiving service of legal documents or process.

SECTION 41. A new subdivision to subsection 3 of section 26.1-46-03 of the North Dakota Century Code is created and enacted as follows:

To the extent that insurance agents or brokers are utilized pursuant to section 26.1-46-11, each agent or broker shall keep a complete and separate record of all policies procured from each risk retention group, which record must be open to examination by the commissioner, as provided in sections 26.1-03-19.1 through 26.1-03-22. These records must, for each policy and each kind of insurance provided thereunder, include the limit of liability, the time period covered, the effective date, the name of the risk retention group which issued the policy, the gross premium charged, and the amount of return premiums, if any.

SECTION 42. Two new subsections to section 26.1-46-03 of the North Dakota Century Code are created and enacted as follows:

Any risk retention group, its agents, and representatives shall comply with chapter 26.1-04. The terms of any insurance policy issued by any risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

A risk retention group that violates any provisions of this chapter will be subject to fines and penalties including revocation of its right to do business in this state, applicable to licensed insurers generally. In addition to complying with the requirements of this section, any risk retention group operating in this state prior to enactment of this chapter shall, within thirty days after the effective date of this chapter, comply with the provision of subdivision a of subsection 1.

SECTION 43. AMENDMENT. Section 26.1-46-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-04. Compulsory associations.

1. No risk retention group may join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor may any risk retention group, or its insureds, receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

2. When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resided or located, may be covered by any insurance guaranty fund or similar mechanism in this state.

3. When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund subject to chapter 26.1-42.

SECTION 44. AMENDMENT. Section 26.1-46-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-06. Purchasing groups - Exemption from certain laws relating to the group purchase of insurance. ~~Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 is exempt from any law of this state relating to the creation of groups for the purchase of insurance, prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws of this state.~~ A purchasing group and its insurer or insurers is subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers are exempt, in regard to liability insurance for the purchasing group, from any law that would:

1. Prohibit the establishment of a purchasing group.

2. Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

3. Prohibit a purchasing group or its members from purchasing insurance on a group basis described in subsection 2.

4. Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

5. Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form.

6. Require that a certain percentage of a purchasing group must obtain insurance on a group basis.

7. Otherwise discriminate against a purchasing group or any of its members.

8. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

SECTION 45. AMENDMENT. Section 26.1-46-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-07. Notice and registration requirements of purchasing groups.

1. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner on forms prescribed by the national association of insurance commissioners which must do all of the following:

   a. Identify the state in which the group is domiciled.

   b. Identify all other states in which the group intends to do business.

   c. Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.

   ~~c.~~ d. Identify the insurance company from which the group intends to purchase its insurance and the domicile of such company.

   e. Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.

   ~~d.~~ f. Identify the principal place of business of the group.

   ~~e.~~ g. Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subsection 9 of section 26.1-46-01.

2. A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in subsection 1.

3. The purchasing group shall register with and designate the commissioner of insurance as its agent solely for the purpose of receiving service of legal documents or process, except that such requirements do not apply in the case of a purchasing group which only purchases insurance that was authorized under the federal Products Liability Risk Retention Act of 1981 to which all of the following apply:

   a. The group was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

   b. Before October 27, 1986, the group purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, the group purchased its insurance from an insurance carrier licensed in any state.

   c. The group was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986.

   d. The group does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

   e. Each purchasing group that is required to give notice pursuant to subsection 1 shall also furnish such information as may be required by the commissioner to verify that the entity qualifies as a purchasing group, determine where the purchasing group is located, and determine appropriate tax treatment.

   f. Any purchasing group which was doing business in this state prior to the enactment of this chapter shall, within thirty days after the effective date of this Act, furnish notice to the commissioner pursuant to the provisions of subsection 1 and furnish such information as may be required pursuant to subsections 2 and 3.

SECTION 46. AMENDMENT. Section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-08. Restrictions on insurance purchased by purchasing groups.

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

2. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

3. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

4. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

SECTION 47. Section 26.1-46-08.1 of the North Dakota Century Code is created and enacted as follows:

26.1-46-08.1. Purchasing group taxation. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing must be:

1. Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

2. Paid first by such insurance source, and if not by such source, by the agent or broker for the purchasing group, and if not by such agent or broker, then by the purchasing group, and if not by such purchasing group, then by each of its members.

SECTION 48. AMENDMENT. Section 26.1-46-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-09. Administrative and procedural authority regarding risk retention groups and purchasing groups. The commissioner is authorized to make use of any of the powers and requirements established under title 26.1 so long as those powers or requirements are not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, ~~and~~ impose penalties, and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirements that any injunction be issued by a court of competent jurisdiction.

[4] **SECTION 49. REPEAL.** Sections 26.1-03-02, 26.1-03-19, 26.1-03-20, 26.1-03-21, 26.1-12-17, chapters 26.1-18, and 26.1-26.2 of the North Dakota Century Code are repealed.

Approved April 12, 1993
Filed April 12, 1993

[4] NOTE: Section 26.1-18-29 was also amended by section 12 of House Bill No. 1045, chapter 45.

CHAPTER 293

HOUSE BILL NO. 1166
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE REVISIONS

AN ACT to amend and reenact section 26.1-03-07, subsection 9 of section 26.1-10-05, section 26.1-22-05, subsection 1 of section 26.1-25-02, sections 26.1-26-31.3, 26.1-26-44, subdivision j of subsection 1 of section 26.1-36-04, and subsection 2 of section 26.1-36-09.1 of the North Dakota Century Code, relating to annual statement filing date, insurance holding company systems, fire and tornado fund, accreditation of courses, notification of license status, insurance rates, claim payments, and mammogram examination coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-07. Annual statement to be filed. Every insurance company doing business in this state shall transmit to the commissioner, not later than March first of each year, a statement of its condition and business for the year ending on the preceding December thirty-first. If March first falls on a Saturday or legal holiday, the statement is due on the next succeeding business day. A company organized under the law of any foreign country or province shall include in the statement only business transacted within the United States, and shall file a supplemental statement of business transacted without the United States not later than December first. The commissioner shall stamp the date of receipt on every statement. The commissioner may not accept the annual statement from any company if the statement was transmitted after the date designated in this section unless the statement is accompanied by the penalty prescribed by section 26.1-03-16.

SECTION 2. AMENDMENT. Subsection 9 of section 26.1-10-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any other provision of law, an insurance company may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and the declaration confers no rights upon shareholders until:

   a. The commissioner has approved the payment of the dividend or distribution; or

   b. The commissioner has not disapproved the payment within the thirty-day period referred to in subsection ~~3~~ 7.

SECTION 3. AMENDMENT. Section 26.1-22-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-05. Public, international peace garden, and winter show buildings insurable in fund. The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries, and the political subdivisions must, and the buildings and fixtures and the permanent contents therein belonging to an international peace garden or a winter show~~,~~ may, be insured under this chapter. No officer or agent of the state or of any political subdivision, and no person having charge of any public buildings belonging to the state, any state industry, or any political subdivision, may pay out any public moneys or funds on account of any insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, or contract in any manner for, or incur any indebtedness against, the state or any political subdivision on account of any such insurance upon any of the buildings or fixtures and permanent contents therein belonging to the state or any political subdivision, except in the manner provided in this chapter.

[1] **SECTION 4. AMENDMENT.** Subsection 1 of section 26.1-25-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Reinsurance other than joint reinsurance to the extent stated in section ~~26.1-25-11~~ 26.1-25-10.5.

SECTION 5. AMENDMENT. Section 26.1-26-31.3 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.3. Accreditation of courses. The commissioner shall adopt by rule criteria for the accreditation of courses for continuing or prelicensure education. Applications for accreditation of any course offered in this state for continuing or prelicensure education must be submitted to the commissioner within the time prescribed by rule and on forms prescribed by rule and with a fee of fifty dollars. ~~Application must be made at least three months prior to the proposed date of the course.~~ The advisory task force shall recommend to the commissioner whether any course satisfies the criteria for accreditation and the number of credit hours to be assigned to the course. The commissioner shall make a final determination as to accreditation and assignment of credit hours for courses.

SECTION 6. AMENDMENT. Section 26.1-26-44 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-44. Notification of suspension, revocation, or refusal - Duty of commissioner. The commissioner shall promptly notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or refusal of a license by the commissioner.

Upon suspension, revocation, or refusal of the license of a resident of this state, the commissioner shall notify the central office of the national association of insurance commissioners ~~and the insurance commissioner of each state for whom the commissioner has executed a certificate as provided for in accordance with subsection 2 of section 26.1-26-25~~.

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[1] NOTE: Section 26.1-25-02 was also amended by section 13 of House Bill No. 1045, chapter 45.

SECTION 7. AMENDMENT. Subdivision j of subsection 1 of section 26.1-36-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

j. A provision that all benefits payable under the policy other than benefits for loss of time will be payable ~~not more than sixty days after receipt of proof~~ according to the provisions of section 26.1-36-37.1, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid as soon as possible after receipt of proof of loss.

SECTION 8. AMENDMENT. Subsection 2 of section 26.1-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

2. This section does not apply to individually guaranteed renewable supplemental, specified disease, long-term care, or other limited benefit policies.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 294

SENATE BILL NO. 2340
(Senator Schoenwald)

PRODUCT LIABILITY INFORMATION

AN ACT to amend and reenact section 26.1-03-13 of the North Dakota Century Code, relating to reporting of product liability information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-13. Reporting of product liability information. Every insurance company providing product liability insurance or excess insurance above self-insurance to any manufacturer, seller, or distributor in this state shall file with the commissioner annually, not later than April first, a report ~~containing the following information~~ for the one-year period ending December thirty-first of the previous year~~:~~

~~1. The name of the insurance company.~~

~~2. The name of all other insurance companies associated with the company submitting the report.~~

~~3. The states in which the company has been admitted for product liability insurance.~~

~~4. The dollar amount collected in product liability earned premiums and the dollar amount of product liability incurred losses in this state and on a nationwide basis.~~

~~5. The amounts shown in answer to subsection 4 which include any other insurance delivered as part of a package which cannot be considered exclusively product liability insurance.~~

~~6. The total number of insureds, resident or located in North Dakota, for which the insurance company provided product liability insurance.~~

~~7. The total number of insureds, resident or located in North Dakota, whose product liability insurance coverage the company canceled or refused to renew and the reasons therefor.~~

~~8. The percentage of product liability premiums that are incurred for the following:~~

~~a. Losses, including all loss adjustment expenses ratioed to premiums earned.~~

~~b. Commissions, ratioed to premiums written.~~

~~c. Taxes, ratioed to premiums written.~~

~~d. All other expenses, ratioed to premiums earned.~~

~~e. The total of all expenses included in subdivisions a through d, ratioed to premiums earned.~~

~~f. Profits and reserves, ratioed to premiums earned.~~

~~9. The basis upon which the company allocates premiums received and losses incurred from a multistate product liability risk, whether it be assigned to the risk's state or domicile, allocated to each state in which the risk has a physical plant, allocated to each state on the basis of sales in each state, or allocated on some other basis~~.

The report must be in the format established by the commissioner ~~and a copy of the insurance company's most recent annual report to shareholders or policyholders must be submitted with the report~~. If any of the required data is estimated, that fact must be clearly indicated.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 295

SENATE BILL NO. 2494
(Senators Nething, Mutch)
(Representatives Dorso, Wald)

INSURANCE COMPANY REDOMESTICATION

AN ACT to create and enact three new sections to chapter 26.1-05 of the North Dakota Century Code, relating to redomestication of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new sections to chapter 26.1-05 of the North Dakota Century Code are created and enacted as follows:

Approval of the domestic insurer - Premium waiver.

1. An insurer organized under the laws of another state which is admitted to do business in this state for the purpose of writing insurance may be a domestic insurer by complying with the requirements of law relative to the organization and licensing of a domestic insurer of the same type in this state and by designating its principal place of business at a place in this state. For purposes of this section, a company is deemed to have designated its principal place of business at a place in this state if the company locates its home office in this state. If an insurer seeks to become a domestic insurer but is unable to designate its principal place of business in this state, the insurer may place on deposit with the Bank of North Dakota, upon the approval of the commissioner, a sum established by the commissioner, which may not be withdrawn without the approval of the commissioner. An insurer that complies with this subsection is entitled to the certificates and licenses to transact the business of a domestic insurer in this state and is subject to the authority and jurisdiction of this state.

2. After an insurance company has redomesticated to this state and located and maintained its home office in this state, the insurance company is allowed a credit against the premium tax imposed and due under section 26.1-03-17 for an amount equal to the premium tax paid in this state during the first two years as a domestic company in this state. This credit must be used in the third and fourth years following the company's redomestication to this state and may not be carried over beyond the fourth year.

Conversion to foreign insurer. A domestic insurer, upon the approval of the commissioner, may transfer its domicile to another state in which it is admitted to transact the business of insurance. Upon transfer, the insurer ceases to be a domestic insurer and, if qualified, may be admitted to this state as a foreign insurer. The commissioner shall approve a proposed transfer unless the commissioner determines the transfer is not in the interests of the policyholders of the state.

Effects of redomestication. In the discretion of the commissioner, the certificate of authority, agent appointments and licenses, rates, and other items in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this state or another state by merger, consolidation, or any other lawful method, continue in effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. An outstanding policy of a transferring insurer remains in effect and does not need to be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing forms with appropriate endorsements as approved by the commissioner. A transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

Approved March 26, 1993
Filed March 26, 1993

CHAPTER 296

SENATE BILL NO. 2527
(Senators Mathern, Graba)
(Representative D. Olsen)

HEALTH COVERAGE MINIMUM BENEFITS

AN ACT to amend and reenact subdivision a of subsection 1 of section 26.1-08-05, subsection 2 of section 26.1-08-05, subdivision a of subsection 1 of section 26.1-08-06, subsection 2 of section 26.1-08-06, and subsection 4 of section 26.1-08-12 of the North Dakota Century Code, relating to minimum benefits of a qualified health coverage plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 26.1-08-05 of the North Dakota Century Code is amended and reenacted as follows:

a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than ~~two~~ five hundred ~~fifty~~ thousand dollars.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-08-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A plan of health coverage is a number one qualified plan A if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than ~~two~~ five hundred ~~fifty~~ thousand dollars.

SECTION 3. AMENDMENT. Subdivision a of subsection 1 of section 26.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than ~~two~~ five hundred ~~fifty~~ thousand dollars.

SECTION 4. AMENDMENT. Subsection 2 of section 26.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

2. A plan of health coverage is a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which must not be less than one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than ~~two~~ five hundred ~~fifty~~ thousand dollars.

SECTION 5. AMENDMENT. Subsection 4 of section 26.1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

4. A person who obtains coverage pursuant to this section may not be covered for maternity during the first two hundred seventy days or any other preexisting condition during the first ~~six months~~ one hundred eighty days of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the date of the application. Any person with coverage through the association plan due to a catastrophic condition or major illness who is also pregnant at the time of application is eligible for maternity benfits after the first one hundred eighty days of coverage. This subsection does not apply to a person receiving nonelective procedures who has lost dependent status under a parent's or guardian's ~~family or group~~ policy ~~and who has had continuous coverage under a family or group policy~~ that has been in effect for the twelve-month period immediately preceding the filing of an application ~~for nonelective procedures~~ or to a person who is treated by nonelective procedures for a congenital or genetic disease.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 297

HOUSE BILL NO. 1170
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

NONPROFIT HEALTH SERVICE DIRECTORS

AN ACT to amend and reenact section 26.1-17-04 of the North Dakota Century Code, relating to the powers and election of the board of directors for nonprofit health service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-17-04. Directors - Responsibilities. A board of directors shall manage the business and affairs of a health service corporation and has the power to amend bylaws. The board is to consist of at least nine members. At least a majority of the directors of a health service corporation writing hospital or medical service contracts under this chapter must be at all times subscribers.

A subscriber director is a director who is a subscriber and who is not a provider of health care, a person who has a material financial or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution that provides health care services, or a spouse or a member of the immediate family of such a person. Nominations for and election of the ~~replacement of~~ subscriber directors must be made by the existing ~~subscriber~~ directors.

A director may serve on the board of only one corporation subject to this chapter at a time.

Population factors, representation of different geographic regions, and the demography of the service area of the corporation subject to this chapter must be considered when making nominations for the board of directors of a corporation subject to this chapter.

A health service corporation may not reimburse or compensate a director for more than necessary and actual expenses for service as a member of the board of directors.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 298

HOUSE BILL NO. 1456
(Representatives Dorso, Howard)
(Senator DeMers)

NONPROFIT HEALTH SERVICE CONTRACTS

AN ACT to amend and reenact section 26.1-17-12 of the North Dakota Century Code, relating to contract limitations for nonprofit health service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-17-12. Contract limitations.

1. Except as provided in this section, every physician, oral surgeon, dentist, or practitioner licensed and registered in ~~the~~ this state ~~of North Dakota~~ has the right to contract with any health service corporation for furnishing general or special medical care, dental care, or optometric care, as the case may be~~, but the governing board of a corporation may refuse to contract or may terminate a contract if the board determines that a physician, oral surgeon, dentist, or practitioner is providing inappropriate or substandard care to the corporation's subscribers~~. A corporation may not impose any restriction as to the methods of diagnosis or treatment. The private relationship of physician and patient, dentist and patient, or practitioner and patient is to be maintained at all times and the subscriber has the right of free choice in selecting any physician, oral surgeon, dentist, or practitioner.

2. The governing board of a health service corporation that writes hospital or medical service contracts may terminate a practitioner's participating contract, designate a practitioner as nonpayable, or otherwise impose reasonable sanctions on any practitioner who continues to engage in a practice pattern that is excessive or inappropriate as compared to the practice pattern for the practitioner's specialty after having been informed by the corporation, in writing, as to the manner in which the practitioner's practice pattern is excessive or inappropriate. The corporation shall consult with the practitioner and provide a reasonable time period of not less than six months within which to modify the practitioner's practice pattern. If, after terminating a practitioner's participating contract with the corporation, the practitioner's practice pattern continues to be excessive or inappropriate, the corporation's central professional services committee may consider recommending to the board that the practitioner be designated nonpayable. The affected practitioner must be given the right to be present and to be heard by the committee which must include representation of the practitioner's specialty. The board may not designate a practitioner as nonpayable in the absence of the committee's recommendation to do so. All reports,

data, and proceedings of the corporation relative to a practitioner who is considered for designation as nonpayable is confidential, and may not be disclosed or be subject to subpoena or other legal process. The corporation may not pay or reimburse claims of its members relating to a treatment or service that is provided by a practitioner who is designated nonpayable. Nonpayable status under this section may not commence until after appropriate notification to the corporation's subscribers and the affected practitioner.

3. All practitioners in a group practice shall elect participating or nonparticipating status, as a group, with the health service corporation. If a practitioner is designated as nonparticipating or nonpayable under this section, the participating or nonparticipating status of the group is not affected. "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association.

4. A health service corporation may, in its discretion, by its articles of incorporation, articles of association, or bylaws, and in its contract with its subscribers, limit the benefits that the corporation will furnish, and may provide for a division of benefits it agrees to furnish into classes or kinds. In the absence of any limitation or division of services, a corporation may provide both general and special medical and surgical, dental, or optometric care benefits, including such service as may necessarily be incident to such care. A corporation may, in its discretion, limit the issuance of contracts as specified in its bylaws.

5. A dental or optometric service contract by a health service corporation may not provide the payment of any cash indemnification by the corporation to the subscriber or the subscriber's estate on account of death, illness, or other injury.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 299

SENATE BILL NO. 2390
(Senator Lindgren)
(Representative Kelsch)

NONPARTICIPATING PHYSICIAN PAYMENT

AN ACT to amend and reenact section 26.1-17-16 of the North Dakota Century Code, relating to services of practitioners not participating under health service plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-16. Services of physicians, oral surgeons, dentists, and practitioners not participating under health service plan. A medical service plan may provide for medical services to subscribers by physicians and oral surgeons not participating under the plan, subject to the approval of the board of directors of the health service corporation. A dental service plan may provide for dental services to subscribers by dentists not participating under the plan, subject to the approval of the board of directors of the health service corporation. An optometric service plan may provide for optometric services to subscribers by practitioners not participating under the plan, subject to the approval of the board of directors of the health service corporation.

Where a subscriber patient is referred by a participating physician to a nonparticipating physician, the health service corporation is to pay, without the approval of the board of directors of the corporation, to the subscriber, upon proper filing of the claim, an amount equal to ~~the amount lawfully charged for the service performed by the nonparticipating physician, but not to exceed an amount equal to one hundred~~ ninety percent of the maximum amount which the corporation would be obligated to pay to a participating physician for identical service. If a participating physician refers a patient to a nonparticipating physician, the referring physician shall inform the patient that the physician to whom the referral is being made is nonparticipating and this may result in the patient being subject to charges greater than those to which the patient would be subject if the patient were being treated by a participating provider. The health service corporation shall provide a listing of all participating physicians to all participating physicians annually. The corporation shall provide monthly updates of the listing of the nonparticipating providers.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 300

SENATE BILL NO. 2226
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

PREPAID LIMITED HEALTH SERVICE ORGANIZATIONS

AN ACT to create and enact chapter 26.1-17.1 of the North Dakota Century Code, relating to prepaid limited health service organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-17.1 of the North Dakota Century Code is created and enacted as follows:

26.1-17.1-01. Definitions. As used in this chapter, unless otherwise defined in this chapter:

1. "Enrollee" means an individual, including dependents, who is entitled to limited health services pursuant to a contract with an entity authorized to provide or arrange for such services under this chapter.

2. "Evidence of coverage" means the certificate, agreement, or contract issued pursuant to section 26.1-17.1-08 setting forth the coverage to which an enrollee is entitled.

3. "Limited health service" means dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services, and such other services as may be determined by the commissioner to be limited health services. Limited health service may not include hospital, medical, surgical, or emergency services except as such services are provided incident to the limited health services set forth in the preceding sentence.

4. "Net equity" means the excess of total assets over total liabilities, excluding liabilities which have been subordinated in a manner acceptable to the commissioner.

5. "Prepaid limited health service organization" means any corporation, partnership, or other entity which, in return for a prepayment, undertakes to provide or arrange for the provision of one or more limited health services to enrollees. Prepaid limited health service organization does not include:

   a. An entity otherwise authorized pursuant to the laws of this state either to provide any limited health service on a prepayment or other basis or to indemnify for any limited health service;

   b. An entity that meets the requirements of section 26.1-17.1-06; or

   c. A provider or entity when providing or arranging for the provision of limited health services pursuant to a contract with a prepaid limited

health service organization or with an entity described in subdivision a or b.

6. "Provider" means any physician, dentist, health facility, or other person or institution which is duly licensed or otherwise authorized to deliver or furnish limited health services.

7. "Subscriber" means the person whose employment or other status, except for family dependency, is the basis for entitlement to limited health services pursuant to a contract with an entity authorized to provide or arrange for such services under this chapter.

8. "Tangible net equity" means net equity reduced by the value assigned to intangible assets including, but not limited to, goodwill; going-concern value; organizational expense; startup costs; long-term prepayments of deferred charges; nonreturnable deposits; and obligations of officers, directors, owners, or affiliates, except short-term obligations of affiliates for goods or services arising in the normal course of business which are payable on the same terms as equivalent transactions with nonaffiliates and which are not past due.

9. "Uncovered expense" means the cost of health care services that are the obligation of a prepaid limited health services organization for which an enrollee may be liable in the event of the insolvency of the organization and for which alternative arrangements acceptable to the commissioner have not been made to cover the costs. Costs incurred by a provider who has agreed in writing not to bill enrollees, except for permissible supplemental charges, must be considered a covered expense.

26.1-17.1-02. Certificate of authority required. A person, corporation, partnership, or other entity may not operate a prepaid limited health service organization in this state without obtaining and maintaining a certificate of authority from the commissioner pursuant to this chapter.

26.1-17.1-03. Application for certificate of authority. An application for a certificate of authority to operate a prepaid limited health service organization must be filed with the commissioner on a form prescribed by the commissioner. Such application must be verified by an officer or authorized representative of the applicant and must set forth, or be accompanied by, the following:

1. A copy of the applicant's basic organizational document, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments to such documents.

2. A copy of all bylaws, rules and regulations, or similar documents, if any, regulating the conduct of the applicant's internal affairs.

3. A list of the names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers, and any person or entity owning or having the right to acquire ten percent or more of the voting securities

of the applicant, and the partners or members in the case of a partnership or association.

4. A statement generally describing the applicant, its facilities, personnel, and the limited health service or services to be offered.

5. A copy of the form of any contract made or to be made between the applicant and any providers regarding the provision of limited health services to enrollees.

6. A copy of the form of any contract made or to be made between the applicant and any person listed in subsection 3.

7. A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any functions including the following:

   a. Marketing and enrollment.

   b. Administration.

   c. Investment management.

   d. Subcontracting for the provision of the limited health service to enrollees.

8. A copy of the form of any contract which is to be issued to employers, unions, trustees, or other organizations or individuals and a copy of any form of evidence of coverage to be issued to subscribers or enrollees.

9. A copy of the applicant's most recent financial statements audited by independent certified public accountants. If the financial affairs of the applicant's parent company are audited by independent certified public accountants but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, certified by an independent certified public accountant, attached to which will be consolidating financial statements of the applicant, satisfies this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this chapter.

10. A copy of the applicant's financial plan, including a three-year projection of anticipated operating results, a statement of the sources of working capital, and any other sources of funding and provisions for contingencies.

11. A schedule of rates and charges.

12. A description of the proposed method of marketing.

13. A statement acknowledging that all lawful process in any legal action or proceeding against the applicant on a cause of action arising in this state is valid if served upon the commissioner.

14. A description of the complaint procedures to be established and maintained as required under section 26.1-17.1-12.

15. A description of the quality assessment and utilization review procedures to be utilized by the applicant.

16. A description of how the applicant will comply with section 26.1-17.1-17.

17. The fee for issuance of a certificate of authority provided in section 26.1-17.1-23.

18. Such other information as the commissioner may reasonably require to make the determinations required by this chapter.

26.1-17.1-04. Issuance of certificate of authority - Denial.

1. Following receipt of an application filed pursuant to section 26.1-17.1-03, the commissioner shall review such application and notify the applicant of any deficiencies. The commissioner shall issue a certificate of authority to an applicant provided that the following conditions are met:

   a. The requirements of section 26.1-17.1-03 have been fulfilled.

   b. The individuals responsible for conducting the applicant's affairs are competent, trustworthy, and possess good reputations, and have had appropriate experience, training, or education.

   c. The applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and to prospective enrollees. In making this determination, the commissioner may consider:

      (1) The financial soundness of the applicant's arrangements for limited health services and the minimum standard rates, deductibles, copayments, and other patient charges used in connection therewith.

      (2) The adequacy of working capital, other sources of funding, and provisions for contingencies.

      (3) Any agreement for paying the cost of the limited health services or for alternative coverage in the event of insolvency of the prepaid limited health service organization.

      (4) The manner in which the requirements of section 26.1-17.1-17 have been fulfilled.

   d. The agreements with providers for the provision of limited health services contain the provisions required by section 26.1-17.1-16.

   e. Any deficiencies identified by the commissioner have been corrected.

2. If the certificate of authority is denied, the commissioner shall notify the applicant and shall specify the reasons for denial in the notice. The

applicant has thirty days from the date of receipt of the notice to request a hearing before the commissioner pursuant to chapter 28-32.

26.1-17.1-05. Effect on organizations operating on effective date of this chapter. Within ninety days after the effective date of this Act, every prepaid limited health service organization operating in this state without a certificate of authority shall submit an application for a certificate of authority to the commissioner. Each such organization may continue to operate during the pendency of its application. In the event an application is denied under this section, the applicant will then be treated as a prepaid limited health service organization whose certificate of authority has been revoked.

26.1-17.1-06. Filing requirements for authorized entities.

1. Any entity authorized pursuant to the laws of this state to operate a health maintenance organization, an accident and health insurance company, a nonprofit health, hospital, or medical service corporation, or a fraternal benefit society and which is not otherwise authorized pursuant to the laws of this state to offer limited health services on a per capita or fixed prepayment basis may do so by filing for approval with the commissioner the information requested by subsections 4, 5, 7, 8, 10, 11, 12, and 15 of section 26.1-17.1-03 and any subsequent material modification or addition thereto.

2. Following approval by the commissioner of the filing in subsection 1, and upon application by the entity and surrender of its original certificate of authority, the commissioner may issue a new certificate of authority under this chapter. The entity will be subject to the capitalization requirements under its original certificate of authority and the net equity and deposit provisions of section 26.1-17.1-17 do not apply.

3. If the commissioner disapproves the filing, the procedures set forth in subsection 2 of section 26.1-17.1-04 must be followed.

26.1-17.1-07. Changes in rates and benefits and material modifications - Addition of limited health services.

1. A prepaid limited health service organization shall file with the commissioner prior to use, a notice of any change in rates, charges, or benefits and of any material modification of any matter or document furnished pursuant to section 26.1-17.1-03, together with such supporting documents as are necessary to fully explain the change or modification.

2. If a prepaid limited health service organization desires to add one or more limited health services, it shall file a notice with the commissioner and, at the same time, shall submit the information required by section 26.1-17.1-03 and shall demonstrate compliance with sections 26.1-17.1-16, 26.1-17.1-17, and 26.1-17.1-23.

3. A change or modification filed with the commissioner pursuant to subsections 1 and 2 may be used by the prepaid limited health service organization only after approval by the commissioner or upon the expiration of sixty days from the date of filing.

4. If such filings are disapproved, the commissioner shall notify the prepaid limited health service organization and shall specify the reasons for disapproval in the notice. The prepaid limited health service organization has thirty days from the date of receipt of notice to request a hearing before the commissioner pursuant to chapter 28-32.

26.1-17.1-08. Evidence of coverage.

1. Every subscriber must be issued an evidence of coverage, which must contain a clear and complete statement of:

   a. The limited health services to which each enrollee is entitled.

   b. Any limitation of the services, kinds of services or benefits to be provided, and exclusions, including any deductible, copayment, or other charges.

   c. Where and in what manner information is available as to where and how services may be obtained.

   d. The method for resolving complaints.

2. Any amendment to the evidence of coverage may be provided to the subscriber in a separate document.

26.1-17.1-09. Rates and charges. The rates and charges must be reasonable in relation to the services provided. The commissioner may request information from the prepaid limited health service organization supporting the appropriateness of the rates and charges.

26.1-17.1-10. Construction with other laws.

1. a. A prepaid limited health service organization organized under the laws of this state must be deemed to be a domestic insurer for purposes of chapter 26.1-10 unless specifically exempted in writing from one or more of the provisions of such act by the commissioner.

   b. A prepaid limited health service organization is subject to chapter 26.1-04.

   c. No other provision of the insurance code applies to a prepaid limited health service organization unless such an organization is specifically mentioned therein, or unless otherwise provided in this chapter.

2. The provision of limited health services by a prepaid limited health service organization or other entity pursuant to this chapter may not be deemed to be the practice of medicine or other healing arts.

3. Solicitation to arrange for or provide limited health services in accordance with this chapter may not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

26.1-17.1-11. Nonduplication of coverage. Notwithstanding any other law of this state, a prepaid limited health service organization, health maintenance organization, accident and health insurance company, nonprofit health or hospital or

medical service corporation, or fraternal benefit society may exclude, in any contract or policy issued to a group, any coverage that would duplicate the coverage for limited health services, whether in the form of services, supplies, or reimbursement, insofar as the coverage or service is provided in accordance with this chapter under a contract or policy issued to the same group or to a part of that group by a prepaid limited health service organization, a health maintenance organization, an accident and health insurance company, a nonprofit health or hospital or medical service corporation, or a fraternal benefit society.

26.1-17.1-12. Complaint system. Every prepaid limited health service organization shall establish and maintain a complaint system providing reasonable procedures for resolving written complaints initiated by enrollees and providers. Nothing herein may be construed to preclude an enrollee or a provider from filing a complaint with the commissioner or as limiting the commissioner's ability to investigate such complaints.

26.1-17.1-13. Examination of organization.

1. For purposes of examination, expenses of examination, and tax credits therefor, each prepaid limited health service organization is subject to the laws applicable to insurance companies.

2. In lieu of such examination, the commissioner may accept the report of an examination made by the commissioner of another state.

26.1-17.1-14. Investments. The funds of a prepaid limited health service organization may be invested only in accordance with the laws and rules applicable to insurance companies.

26.1-17.1-15. Agents. No individual may apply, procure, negotiate, or place for others any policy or contract of a prepaid limited health service organization unless that individual holds a license or is otherwise duly authorized to sell accident and health insurance policies, health, hospital or medical service contracts, or health maintenance organization contracts.

26.1-17.1-16. Contracts with providers. All contracts with providers or with entities subcontracting for the provision of limited health services to enrollees on a prepayment or other basis must contain or must be construed to contain the following terms and conditions:

1. In the event the prepaid limited health service organization fails to pay for limited health services for any reason whatsoever, including but not limited to, insolvency or breach of this contract, the enrollees are not liable to the provider for any sums owed to the provider under this contract.

2. No provider, agent, trustee, or assignee thereof may maintain an action at law or attempt to collect from the enrollee sums owed to the provider by the prepaid limited health service organization.

3. These provisions do not prohibit collection of uncovered charges consented to by enrollees or collection of copayments from enrollees.

4. These provisions survive the termination of this contract, regardless of the reason giving rise to termination.

5. Termination of this contract does not release the provider from completing procedures in progress on enrollees then receiving treatment for a specific condition for a period not to exceed sixty days, at the same schedule of copayment or other applicable charge in effect upon the effective date of termination of this contract.

6. Any amendment to these foregoing provisions of this contract must be submitted to and be approved by the commissioner prior to becoming effective.

26.1-17.1-17. Protection against insolvency - Deposit.

1. a. Except as approved in accordance with subsection 3, each prepaid limited health service organization shall, at all times, have and maintain tangible net equity equal to the greater of:

   (1) Fifty thousand dollars; or

   (2) Two percent of the organization's annual gross premium income, up to a maximum of the required capital and surplus of an accident and health insurer.

   b. A prepaid limited health service organization that has uncovered expenses in excess of fifty thousand dollars, as reported on the most recent annual financial statement filed with the commissioner, shall maintain tangible net equity equal to twenty-five percent of the uncovered expense in excess of fifty thousand dollars in addition to the tangible net equity required by subdivision a of subsection 1.

2. a. Each prepaid limited health service organization shall deposit with the commissioner or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the commissioner in an amount equal to twenty-five thousand dollars plus twenty-five percent of the tangible net equity required in subsection 1; provided, however, that the deposit may not be required to exceed one hundred thousand dollars.

   b. The deposit shall be an admitted asset of the prepaid limited health service organization in the determination of tangible net equity.

   c. All income from deposits shall be an asset of the prepaid limited health service organization. A prepaid limited health service organization may withdraw a deposit or any part thereof after making a substitute deposit of equal amount and value. Any securities must be approved by the commissioner before being substituted.

   d. The deposit must be used to protect the interests of the prepaid limited health service organization's enrollees and to assure continuation of limited health care services to enrollees of a prepaid limited health service organization that is in rehabilitation or conservation. If a prepaid limited health service organization is placed in receivership or liquidation, the deposit shall be an asset subject to provisions of the liquidation act.

e. The commissioner may reduce or eliminate the deposit requirement if the prepaid limited health service organization has made an acceptable deposit with the state or jurisdiction of domicile for the protection of all enrollees, wherever located, and delivers to the commissioner a certificate to such effect, duly authenticated by the appropriate state official holding the deposit.

3. The commissioner may waive the requirements of subsections 1 and 2 upon a finding that:

   a. The prepaid limited health service organization has a net equity of at least five million dollars; or

   b. An entity having a net equity of at least five million dollars furnishes to the commissioner a written commitment, which is acceptable to the commissioner, to provide for the uncovered expenses of the prepaid limited health service organization.

26.1-17.1-18. Officers and employees fidelity bond.

1. A prepaid limited health service organization shall maintain in force a fidelity bond in its own name on its officers and employees in an amount not less than fifty thousand dollars or in any other amount prescribed by the commissioner. Except as otherwise provided by this subsection, the bond must be issued by an insurance company that is licensed to do business in this state or, if the fidelity bond required by this subsection is not available from an insurance company that holds a certificate of authority in this state, a fidelity bond procured by a licensed surplus lines agent resident in this state shall satisfy the requirements of this subsection.

2. In lieu of the bond specified in subsection 1, a prepaid limited health service organization may deposit with the commissioner cash or securities or other investments of the types set forth in section 26.1-17.1-14. Such a deposit must be maintained in joint custody with the commissioner in the amount and subject to the same conditions required for a bond under this subsection.

26.1-17.1-19. Reports.

1. Every prepaid limited health service organization shall file with the commissioner annually, on or before March first, a report verified by at least two principal officers covering the preceding calendar year.

2. Such report must be on forms prescribed by the commissioner and must include:

   a. A financial statement of the organization, including its balance sheet, income statement, and statement of changes in financial position for the preceding year, certified by an independent public accountant or a consolidated audited financial statement of its parent company certified by an independent public accountant, attached to which must be consolidating financial statements of the prepaid limited health service organization.

b. The number of subscribers at the beginning of the year, the number of subscribers as of the end of the year, and the number of enrollments terminated during the year.

c. Such other information relating to the performance of the organization as is necessary to enable the commissioner to carry out the duties under this chapter.

3. The commissioner may require more frequent reports containing such information as is necessary to enable the commissioner to carry out the duties under this chapter.

4. The commissioner may assess a fine of up to one hundred dollars per day for each day any required report is late, and the commissioner may suspend the organization's certificate of authority pending the proper filing of the required report by the organization.

26.1-17.1-20. Suspension or revocation of certificate of authority.

1. The commissioner may suspend or revoke the certificate of authority issued to a prepaid limited health service organization pursuant to this chapter upon determining that any of the following conditions exist:

a. The prepaid limited health service organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to section 26.1-17.1-03, unless amendments to such submissions have been filed and authorized pursuant to section 26.1-17.1-07.

b. The prepaid limited health service organization issues an evidence of coverage or uses rates or charges which do not comply with the requirements of sections 26.1-17.1-08 and 26.1-17.1-09.

c. The prepaid limited health service organization is unable to fulfill its obligations to furnish limited health services.

d. The prepaid limited health service organization is not financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

e. The tangible net equity of the prepaid limited health service organization is less than that required by section 26.1-17.1-17 or the prepaid limited health service organization has failed to correct any deficiency in its tangible net equity as required by the commissioner.

f. The prepaid limited health service organization has failed to implement in a reasonable manner the complaint system required by section 26.1-17.1-12.

g. The continued operation of the prepaid limited health service organization would be hazardous to its enrollees.

h. The prepaid limited health service organization has otherwise failed to comply with this chapter.

2. If the commissioner has cause to believe that grounds for the suspension or revocation of a certificate of authority exist, the commissioner shall notify the prepaid limited health service organization in writing specifically stating the grounds for suspension or revocation and fixing a time not more than sixty days thereafter for a hearing on the matter in accordance with chapter 28-32.

3. When the certificate of authority of a prepaid limited health service organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as the commissioner may find to be in the best interest of the enrollees, to the end that the enrollees will be afforded the greatest practical opportunity to obtain continuing limited health services.

26.1-17.1-21. Penalties. In lieu of any penalty specified elsewhere in this chapter, or when no penalty is specifically provided, whenever any prepaid limited health service organization or other person, corporation, partnership, or entity subject to this chapter has been found after hearing to have violated any provision of this chapter, the commissioner may:

1. Issue and cause to be served upon the organization, person, or entity charged with the violation a copy of such findings and an order requiring such organization, person, or entity to cease and desist from engaging in the act or practice which constitutes the violation.

2. Impose a monetary penalty of not more than one thousand dollars for each violation, but not to exceed an aggregate penalty of ten thousand dollars.

26.1-17.1-22. Rehabilitation, conservation, or liquidation.

1. Any rehabilitation, conservation, or liquidation of a prepaid limited health service organization must be deemed to be the rehabilitation, conservation, or liquidation of an insurance company and must be conducted pursuant to chapter 26.1-06.1.

2. Prepaid limited health service organizations are not subject to chapter 26.1-38.1, nor do the protections provided by chapter 26.1-38.1 apply to any individuals entitled to receive limited health services from a prepaid limited health service organization.

26.1-17.1-23. Fees. Every prepaid limited health service organization is subject to the fees set out in section 26.1-01-07.

26.1-17.1-24. Confidentiality.

1. Any information pertaining to the diagnosis, treatment, or health of any enrollee obtained from such person or from any provider by any prepaid limited health service organization and any contract with providers submitted pursuant to the requirements of this chapter must be held in confidence and may not be disclosed to any person except:

a. To the extent that it may be necessary to carry out the purposes of this chapter;

b. Upon the express consent of the enrollee or applicant, provider, or prepaid limited health service organization, as appropriate;

c. Pursuant to statute or court order for the production of evidence or the discovery thereof; or

d. In the event of claim or litigation wherein such data or information is relevant.

2. With respect to any information pertaining to the diagnosis, treatment, or health of any enrollee or applicant, a prepaid limited health service organization is entitled to claim any statutory privileges against disclosure which the provider who furnished such information to the prepaid limited health service organization is entitled to claim.

3. In addition, any information provided to the commissioner that constitutes a trade secret, is privileged information, or is part of a department investigation or examination must be held in confidence.

26.1-17.1-25. Taxes. Every prepaid limited health service organization is subject to the tax provided in section 26.1-03-17 as it pertains to health maintenance organizations, and each prepaid limited health service organization is entitled to the same tax deductions, reductions, abatements, and credits that health maintenance organizations are entitled to receive.

26.1-17.1-26. Rulemaking. The commissioner may adopt reasonable rules necessary in the implementation of this chapter.

Approved March 31, 1993
Filed April 1, 1993

CHAPTER 301

HOUSE BILL NO. 1046
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

BOILER INSPECTION DUTIES TRANSFER

AN ACT to transfer boiler inspection duties from the workers compensation bureau to the commissioner of insurance as manager of the state fire and tornado fund; and to repeal chapter 65-12 of the North Dakota Century Code, relating to boiler inspection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definition. As used in this Act, unless the context otherwise requires "boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

SECTION 2. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction. The commissioner, as manager of the state fire and tornado fund, shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

SECTION 3. Qualifications of chief boiler inspector - Deputy inspectors.

1. No person is eligible to the office of chief boiler inspector unless that person:

   a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the commissioner.

   b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the commissioner.

   c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.

2. The commissioner shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

SECTION 4. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:

   a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal and external inspection of boilers to which this Act applies.

   b. Cooperate and assist in loss prevention programs sponsored by the commissioner.

2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

SECTION 5. General requirement. Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this Act.

SECTION 6. Exempt boilers - Inspection of exempt boilers. This Act does not apply to:

1. Any boiler subject to federal inspection or under federal control.

2. Any boiler located on a farm and used solely for agricultural purposes.

3. Any heating boiler located in a private residence or in an apartment house of less than six family units.

4. Any hot water supply boiler not exceeding the following limitations:

   a. Input of two hundred thousand British thermal units per hour.

   b. Pressure of one hundred sixty pounds [72.57 kilograms] per square inch [6.45 square centimeters] gauge.

   c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].

5. Any portable steam cleaner commonly used in a garage.

6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.

SECTION 7. Inspection of boilers. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this Act. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the commissioner. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment

under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined that the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every twenty-four months internally and externally while not under pressure, and at least once every eighteen months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for twenty-four months inspection shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the chemical physical laboratory analysis of samples of the boiler water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. In the event an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

SECTION 8. Special inspector.

1. Upon written request of the employer, the commissioner may appoint as a special inspector an inspector in the employ of any insurance company authorized to insure boilers in this state against loss from explosion or any self-insured company that has employees for the purpose of inspecting its own boilers in this state. No person may be appointed as a special inspector unless that person has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.

2. Every inspection made by a special inspector must be performed in accordance with this Act and a complete report of the inspection must be filed with the commissioner in the time, manner, and form as prescribed by the commissioner.

3. If a complete report is not filed with the commissioner within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless extensions of time are granted by the chief boiler inspector. For that inspection, the insurance company or self-insured company shall pay all appropriate inspection fees in accordance with section 9 of this Act.

4. The chief boiler inspector may inspect any boiler to which a special inspection applies.

5. The commissioner may, for cause, suspend or revoke the appointment of any special inspector.

SECTION 9. Inspection fees. Upon completion of inspection, the owner or user of a boiler inspected by the chief boiler inspector shall pay to the commissioner fees or a combination of fees which must be determined annually by the commissioner. The commissioner may determine and annually adjust a fee scale for the internal inspection of power boilers, internal inspections of low pressure heating boilers,

external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than one hundred dollars may be charged or collected for the inspection of a boiler in a year except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for an inspection of a steam traction engine in a year except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed one hundred eighty-five dollars per day or one hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09. The annual fee for the issuance of a reciprocal commission card for a special inspector is twenty dollars and the annual fee for the issuance of a welder-qualified card is ten dollars.

SECTION 10. Certificate of inspection - Certificate to be posted. The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boilers are in a safe condition to be operated. The commissioner shall charge a fee of fifteen dollars for each certificate of inspection issued as the result of inspections authorized under section 8 of this Act. The fees are the liability of the insurance company or self-insured company and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated. No certificate is valid for a period of more than twelve months for power boilers, twenty-four months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boilerroom or adjacent to the boiler inspected.

SECTION 11. Certificate of inspection required - Penalty. No person may operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

SECTION 12. Manufacturer's data report. The boiler manufacturer shall provide the commissioner with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting that the boiler has been constructed in accordance with the rules adopted to implement this Act.

SECTION 13. Disposition of funds. All funds collected and received under this Act must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections. The commissioner shall not issue a certificate of inspection until all inspection fees have been paid in accordance with section 9 of this Act.

SECTION 14. Rules - Penalty for violation - Hearing. The commissioner shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this Act. The commissioner may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with those rules. The commissioner shall revoke any certificate presently in

force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.

Any owner or user of a boiler may request a hearing before the commissioner within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the commissioner becomes final and is not subject to further proceedings.

SECTION 15. REPEAL. Chapter 65-12 of the North Dakota Century Code is repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 302

HOUSE BILL NO. 1357
(Representatives Soukup, Bernstein, Cleary)
(Senators Lindaas, Nalewaja, Tomac)

AUTO INSURANCE PREMIUM REDUCTIONS

AN ACT to amend and reenact section 26.1-25-04.1 of the North Dakota Century Code, relating to the discounts from certain motor vehicle insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-25-04.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-04.1. Motor vehicle insurance rate filings - Premium reduction for accident prevention course completion. All rate filings with the commissioner for motor vehicle liability and physical damage insurance must provide for an appropriate reduction in premium charges for the principal operators of motor vehicles for at least a two-year period following their successful completion of a motor vehicle accident prevention course. The reduction in premium charges must be separately disclosed. The premium billing must disclose the reduction in premium charges with respect to the person eligible for the reduction. The reduction in premium charges does not apply to an operator who is subject to an experience rating or a driver education premium reduction. If a policy insures two or more motor vehicles, the premium reduction applies only to the motor vehicle principally operated by the person who has satisfactorily completed the motor vehicle accident prevention course. The course must be approved by the superintendent of the state highway patrol. The course sponsor shall provide each successful participant a certificate ~~which~~ that is the basis for the insurance discount. A driver fifty-five years of age or older who successfully completes an approved motor vehicle accident prevention course is entitled to a three-year insurance premium reduction. The reduction may be applied only to a private passenger motor vehicle or a pickup truck or van that has a gross vehicle weight of less than ten thousand pounds [4535.92 kilograms] and which is not used for delivering or transporting goods or materials unless the delivery and transport is incidental to an operator's business.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 303

SENATE BILL NO. 2225
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

AUTO INSURANCE SURCHARGE AND DECLINATION

AN ACT to create and enact two new sections to chapter 26.1-25 of the North Dakota Century Code, relating to accident surcharge; and to amend and reenact subsection 5 of section 26.1-40-11 of the North Dakota Century Code, relating to prohibited reasons for declinations of automobile insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 26.1-25 of the North Dakota Century Code are created and enacted as follows:

Motor vehicle accident surcharge. Concerning motor vehicle accidents occurring after August 1, 1993:

1. An insurer may not assess an accident surcharge on the policy of any insured as a result of a comprehensive coverage claim or when the insured's unattended vehicle was legally parked when the damage occurred.

2. An insurer may not assess an accident surcharge on the policy of any insured when a claim has been paid pursuant to section 26.1-40-17.1 unless the insurer is not entitled to recover damages from the party at fault.

Disclosure of accident surcharge and loss of discount. Before, or at the time of issuance of a policy, an insurer insuring a motor vehicle must notify the insured in writing of the insurer's underwriting and rating procedures applicable to accident surcharges and loss of discounts.

SECTION 2. AMENDMENT. Subsection 5 of section 26.1-40-11 of the North Dakota Century Code is amended and reenacted as follows:

5. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 304

HOUSE BILL NO. 1230
(Representatives Payne, Wald)
(Senators Lindgren, Tallackson)

INSURANCE AGENT EDUCATION EXEMPTION

AN ACT to amend and reenact subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code, relating to continuing education requirements for insurance agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 26.1-26-31.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this section, any person licensed as an insurance agent, insurance broker, surplus lines insurance broker, or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom hours. The commissioner may reduce the minimum number of hours per year of approved coursework for any person having a license limited to a single line of insurance as described in section 26.1-26-11. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each two-year period following licensure. No continuing education is required of ~~a life insurance~~ an agent licensed for the sale of life insurance or sickness, accident, and health insurance, or both, who is at least sixty-two years of age, who has a combined total years of continuous licensure as such agent and years of age which equals eighty-five, and whose commissions from new business each year do not exceed ten thousand dollars. No continuing education is required of an insurance agent who sells only group credit life or group credit accident and health insurance to cover an indebtedness.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 305

HOUSE BILL NO. 1332
(Representative Svedjan)
(Senator DeMers)

HEALTH CARE UTILIZATION REVIEW

AN ACT to create and enact a new section to chapter 26.1-26.4 of the North Dakota Century Code, relating to health care utilization review; and to amend and reenact subsection 5 of section 26.1-26.4-02 and sections 26.1-26.4-03 and 26.1-26.4-04 of the North Dakota Century Code, relating to health care service utilization review.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 26.1-26.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Utilization review agent" means any person or entity performing utilization review, except:

   a. An agency of the federal government; or

   b. An agent acting on behalf of the federal government or the department of human services, but only to the extent that the agent is providing services to the federal government or the department of human services.

SECTION 2. AMENDMENT. Section 26.1-26.4-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-03. Certification. A utilization review agent may not conduct utilization review in this state unless the utilization review agent has certified to the commissioner in writing that the agent is in compliance with section 26.1-26.4-04. Certification must be made annually on or before March first of each calendar year. In addition, a ~~certification~~ utilization review agent must file the following information:

1. The name, address, telephone number, and normal business hours of the utilization review agent~~;~~.
2. The name and telephone number of a person for the commissioner to contact~~; and~~.
3. A description of the appeal procedures for utilization review determinations.
4. A list of the third party payers for whom the private review agent is performing utilization review in the state.

A provider may request that a utilization review agent furnish the provider with the medical review criteria to be used in evaluating proposed or delivered health

care services. Any material changes in the information filed in accordance with this section must be filed with the commissioner within thirty days of the change.

SECTION 3. AMENDMENT. Section 26.1-26.4-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-04. Minimum standards of utilization review agents. All utilization review agents must meet the following minimum standards:

1. Notification of a determination by the utilization review agent must be mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two business days of the receipt of the request for determination and the receipt of all information necessary to complete the review.

2. Any determination by a utilization review agent as to the necessity or appropriateness of an admission, service, or procedure must be reviewed by a physician or, if appropriate, a licensed psychologist, or determined in accordance with standards or guidelines approved by a physician or licensed psychologist.

3. Any notification of a determination not to certify an admission or service or procedure must include the principal reason for the determination and the procedures to initiate an appeal of the determination.

4. Utilization review agents shall maintain and make available a written description of the appeal procedure by which enrollees or the provider of record may seek review of determinations by the utilization review agent. The appeal procedure must provide for the following:

   a. On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate must be made by a physician or, if appropriate, a licensed psychologist.

   b. Utilization review agents shall complete the adjudication of appeals of determinations not to certify admissions, services, and procedures no later than thirty days from the date the appeal is filed and the receipt of all information necessary to complete the appeal.

   c. Utilization review agents shall provide for an expedited appeals process for emergency or life-threatening situations. Utilization review agents shall complete the adjudication of expedited appeals within forty-eight hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal.

5. Utilization review agents shall make staff available by toll-free telephone at least forty hours per week during normal business hours.

6. Utilization review agents shall have a telephone system capable of accepting or recording incoming telephone calls during other than normal business hours and shall respond to these calls within two working days.

7. Utilization review agents shall comply with all applicable laws to protect confidentiality of individual medical records.

8. Physicians or psychologists making utilization review determinations shall have current licenses from a state licensing agency in the United States.

9. Utilization review agents shall allow a minimum of twenty-four hours following an emergency admission, service, or procedure for an enrollee or the enrollee's representative to notify the utilization review agent and request certification or continuing treatment for that condition.

10. When an initial appeal to reverse a determination is unsuccessful, a subsequent determination regarding hospital, medical, or other health care services provided or to be provided to a patient which may result in a denial of third party reimbursement or a denial of precertification for that service must include the evaluation, findings, and concurrence of a physician trained in the relevant specialty to make a final determination that care provided or to be provided was, is, or may be medically inappropriate.

However, the commissioner may find that the standards in this section have been met if the utilization review agent has received approval or accreditation by a utilization review accreditation organization.

SECTION 4. A new section to chapter 26.1-26.4 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Utilization review in this state - Conditions of employment. A utilization review agent is deemed to be conducting utilization review in this state if the agent conducts utilization review involving services rendered or to be rendered in the state regardless of where the agent actually performs the utilization review. No person may be employed or compensated as a private review agent under any agreement or contract where compensation of the review agent is contingent upon a denial or reduction in the payment for hospital, medical, or other health care services.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 306

HOUSE BILL NO. 1417
(Representative Gorman)

BAIL BONDS

AN ACT to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to bail bonds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Definition. "Bail bondsman" means any person who has been approved by the commissioner and appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for the services.

Licensing and continuing education requirements. The licensing and continuing education requirements under chapter 26.1-26 apply to bail bondsmen.

Persons disqualified as bail bondsmen - Violation is misdemeanor. The following persons or classes may not be bail bondsmen and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, committing magistrates, magistrate court judges, sheriffs, deputy sheriffs and constables, or any person having the power to arrest or having anything to do with the control of federal, state, county, or municipal prisoners. A violation of this section is a class B misdemeanor.

Unqualified and unlicensed person acting as bail bondsman prohibited - Pledging of property by individual as security for bail bond permitted - Violation is misdemeanor. No person may act in the capacity of a bail bondsman or perform any of the functions, duties, or powers prescribed for bail bondsmen under the provisions of this chapter unless that person is qualified and licensed as provided in this chapter. However, none of the provisions of this section prohibit any individual from pledging real or other property as security for a bail bond in judicial proceedings if the person does not receive, or is not promised, money or other things of value therefor. Violation of this section is a class B misdemeanor.

Violations - Penalties.

1. The commissioner may suspend, revoke, or refuse to continue, issue, or renew any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

   a. Recommending any particular attorney at law to handle the case in which the bail bondsman has caused a bond to be issued under the terms of this chapter.

b. Forging the name of another to a bond or application for bond.

c. Soliciting business in or about any place for prisoners or confined, arraigned, or in custody.

d. Paying a fee or rebate, or giving or promising anything of value to a jailer, trustee, police officer or officer of the law, or any other person who has power to arrest or hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or entreatment thereof, or to secure, delay, or other advantage. This does not apply to a jailer, police officer, or officer of the law who is not on duty and who assists in the apprehension of a defendant.

e. Paying a fee or rebating or giving anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

f. Accepting anything of value from a principal other than a premium. Provided, the bondsman may accept collateral security or other indemnity from the principal which must be returned immediately upon final termination of liability on the bond. Such collateral security or other indemnity required by the bondsman must be reasonable in relation to the amount of the bond.

g. Willful failure to return collateral security to the principal when the principal is entitled thereto.

h. Knowingly employing a person whose agent license has been revoked, suspended, or denied in this or any other state.

i. Knowingly or intentionally executing a bail bond without collecting in full a premium therefor, at the premium rate as filed with and approved by the commissioner.

j. Failing to pay any forfeiture as directed by a court and as required by this title.

2. A bail bondsman or bail bond agency may not advertise as or hold itself out to be a surety company.

3. A bail bondsman may not sign nor countersign any blank in any bond, nor give up power of attorney to or otherwise authorize, anyone to countersign the bail bondsman's name to bonds.

4. When a bondsman accepts collateral, the bondsman shall give a written receipt for the collateral and this receipt must contain a full description of the collateral received in the terms of redemption. The bondsman shall keep copies of all receipts of the bonds to be placed in business to be available to the commissioner for the commissioner's review.

5. The provisions and penalties under this section are in addition to those provided under chapter 26.1-26.

Access to jails. Every person who holds a valid bail bondsman license issued by the insurance commissioner is entitled to equal access to the jails of the state

for the purpose of making bond, subject to the provisions of this chapter and the rules adopted in the manner provided by law. Jail personnel, law enforcement officers, and court personnel may not suggest, recommend, advise, or promote a particular bondsman. Each jail shall furnish a space convenient to the telephones in the booking area to be used to hold business cards of bondsmen.

Surrender of defendant prior to breach. At any time before there has been a breach of the undertaking in any type of bail provided herein, the surety or bondsman may surrender the defendant, or the defendant may surrender, to the official to whose custody the defendant would have been given had the defendant been committed. The defendant may be surrendered without the return of premium for the bond if the defendant has been guilty of nonpayment of premium, changing address without notifying the bondsman, self concealment, or leaving the jurisdiction of the court without the permission of the bondsman, or of violating his contract with the bondsman in any way that does harm to the bondsman, or the surety, or violates the obligation to the court. For the purpose of surrendering the defendant, the surety may arrest the defendant before the forfeiture of the undertaking, or by written authority endorsed on a certified copy of the undertaking, may empower any peace officer to make arrest, first paying the lawful fees therefor.

Maximum commission or fee. A professional bondsman may not charge a premium, commission, or fee in an amount more than ten percent of the amount of bail furnished by the bondsman, or fifty dollars, whichever is greater.

Failure to appear. If a defendant fails to appear for a scheduled court appearance, the clerk of court will notify the bondsman. If the bondsman returns the defendant to the jurisdiction of the court, the bondsman may petition the court for a return of the forfeiture, less five percent for court costs.

Rules. The commissioner may adopt reasonable rules for implementation and administration of this chapter.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 307

SENATE BILL NO. 2328
(Senators Urlacher, Robinson)
(Representatives A. Olson, Wald)

ANNUITY CONTRACTS

AN ACT to create and enact a new subsection to section 26.1-34-01 of the North Dakota Century Code, relating to required annuity contract provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-34-01 of the North Dakota Century Code is created and enacted as follows:

A statement that when an annuity contract becomes a claim by the death of the annuitant, settlement:

a. If payable in one sum, must be made upon due proof of death, or not later than two months after receipt of the proof, and must include reasonable interest accrued from the date of death; or

b. If made under a settlement option other than subdivision a, must include reasonable interest accrued from date of death until such option is made according to the provisions of the contract.

As used in this subsection, the term "reasonable interest" means the same rate of interest as paid on death proceeds left on deposit with the insurer.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 308

SENATE BILL NO. 2479
(Senators Yockim, Evanson, Mathern)
(Representatives Dalrymple, Gulleson, Porter)

MENTAL DISORDER INSURANCE SERVICES

AN ACT to amend and reenact subsection 2 of section 26.1-36-09 of the North Dakota Century Code, relating to group health policy and service contract mental disorder coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 26.1-36-09 of the North Dakota Century Code is amended and reenacted as follows:

2. a. The benefits must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment~~:~~.

~~a.~~ b. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of sixty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto offering treatment for the prevention or cure of mental disorder or other related illness.

~~b.~~ c. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of mental disorder or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

~~c.~~ d. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization; provided, however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.

~~d.~~ e. (1) In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of thirty hours for services covered under this section in any calendar year if the treatment services are provided within the scope of licensure by

a nurse who holds advanced licensure with a scope of practice within mental health or if the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified social worker who ~~is a board certified diplomate in clinical social work, or the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health.~~:

(a) Possesses a master's or doctorate degree in social work from an institution accredited by the council of social work education;

(b) Has at least one year of direct clinical social work practice during graduate school or one year of postgraduate supervised clinical social work practice in a structured teaching environment;

(c) Has at least seven thousand five hundred hours of post social work graduate degree clinical social work experience obtained within five years with at least three thousand hours direct clinical social work practice within the last ten years;

(d) Has at least three thousand hours post social work graduate degree supervised practice experience obtained within two years, one thousand five hundred hours of which must have been under the supervision of a qualified clinical social worker; and

(e) If not licensed in this state, is licensed, certified, or registered at the highest level of social work practice in another state.

(2) Upon the request of an insurance company, a nonprofit health service corporation, or a health maintenance organization the North Dakota board of social work examiners shall provide to the requesting entity information to certify that a licensed certified social worker meets the qualifications required under this section.

(3) The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five hours in any calendar year, and may not establish a copayment greater than twenty percent for the remaining hours.

f. "Partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 309

HOUSE BILL NO. 1485
(Representative Stenehjem)
(Senators W. Stenehjem, B. Stenehjem)

INSURANCE BENEFIT COORDINATION

AN ACT to amend and reenact sections 26.1-36-10 and 26.1-36-29 of the North Dakota Century Code, relating to coordination of accident and health insurance benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-10. ~~Group health~~ Health policy and health service contract coordination of benefit provisions. A group health insurance policy or a group health service contract may contain coordination of benefit provisions for the control of overinsurance. An individual health insurance policy or individual health service contract, except a specific disease, hospital indemnity, or other limited benefit plan, may contain coordination of benefit provisions for the control of overinsurance. These provisions must be in accordance with appropriate guidelines set forth in rules adopted by the commissioner.

SECTION 2. AMENDMENT. Section 26.1-36-29 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-29. Coordination of benefits in individual and group accident and health policies - Limitations. An insurer or health service corporation may not issue or renew any individual or group accident and health insurance policy that excludes or reduces the benefits payable or services to be rendered to or on behalf of any insured because benefits have been paid or are also payable under any individually underwritten and individually issued contract or plan of insurance which provides exclusively for ~~accident and health~~ specific disease, hospital indemnity, and other limited benefits, irrespective of the mode or channel of premium payment, with or without payroll deduction, to the insurer and regardless of any reduction in the premium by virtue of the insured's membership in any organization or of the insured's status as an employee. This section does not affect the practice of coordination of benefits ~~between group policies~~ as provided in section 26.1-36-10.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 310

SENATE BILL NO. 2206
(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

MEDICARE SUPPLEMENT AND LONG-TERM CARE INSURANCE

AN ACT to create and enact a new section to chapter 26.1-45 of the North Dakota Century Code, relating to immunity from liability for volunteers of insurance counseling programs; and to amend and reenact subsection 4 of section 26.1-36.1-01, section 26.1-36.1-02, subsections 1 and 3 of section 26.1-36.1-05, subsection 4 of section 26.1-45-01, section 26.1-45-05.1, and subsection 1 of section 26.1-45-09 of the North Dakota Century Code, relating to medicare supplement insurance, long-term care insurance, and right to return a policy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-36.1-01 of the 1992 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Medicare supplement policy" means a group or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the federal Social Security Act [42 U.S.C. 1395 et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include~~:~~

   ~~a.~~ ~~A~~ a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.

   ~~b. A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:~~

      ~~(1) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;~~

      ~~(2) Has been maintained in good faith for purposes other than obtaining insurance; and~~

      ~~(3) Has been in existence for at least two years prior to the date of its initial offering of the policy or plan to its members.~~

SECTION 2. AMENDMENT. Section 26.1-36.1-02 of the 1992 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36.1-02. Standards for medicare supplement policies.

1. The commissioner shall adopt reasonable rules to establish specific standards for provisions of medicare supplement policies. The standards are in addition to and in accordance with applicable laws of this state, and may include coverage of:

   a. Terms of renewability.

   b. Initial and subsequent conditions of eligibility.

   c. Nonduplication of coverage.

   d. Probationary periods.

   e. Benefit limitations, exceptions, and reductions.

   f. Elimination periods.

   g. Requirements for replacement.

   h. Recurrent conditions.

   i. Definition of terms.

2. The commissioner may adopt rules that specify prohibited medicare supplement policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy or certificate.

3. Notwithstanding any other law, a medicare supplement policy or certificate may not deny a claim for losses incurred for more than six months from the effective date of coverage for a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

4. ~~A policy or certificate of insurance providing medicare supplement benefits which is sold to a consumer to replace another medicare supplement policy or certificate may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions applies to the new policy unless the policy otherwise provides.~~

~~5.~~ No medicare supplement insurance policy, contract, or certificate in force in the state may contain benefits that duplicate benefits provided by medicare.

SECTION 3. AMENDMENT. Subsections 1 and 3 of section 26.1-36.1-05 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. To provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy or certificate may be delivered or issued for delivery in this state ~~and no certificate may be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state~~ unless an outline of coverage is delivered to the applicant at the time application is made.

3. The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with the delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare ~~by reason of age~~, but in no event later than the time of policy delivery.

SECTION 4. AMENDMENT. Subsection 4 of section 26.1-45-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders, whether issued by insurers, fraternal benefit societies, nonprofit health service corporations, prepaid health plans, health maintenance organizations, or any similar entity, which provide directly or which supplement long-term care insurance. The term also includes home health care type insurance policies or riders which provide directly or which supplement long-term care insurance; and include a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term does not include any insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expenses coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

Notwithstanding any other provision contained herein, any product advertised, marketed, or offered as a long-term care insurance is subject to the provisions of this chapter.

SECTION 5. AMENDMENT. Section 26.1-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-05.1. Rescission of long-term care insurance policy or certificate. An insurer may not rescind a long-term care insurance policy or certificate or deny a claim on the basis of representations made by an insured on the application for insurance after ~~it~~ coverage has been in effect for six months except upon a showing by the insurer that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

SECTION 6. AMENDMENT. Subsection 1 of section 26.1-45-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Long-term care insurance applicants have the right to return the policy or certificate within thirty days of the date of its delivery or within thirty days of its effective date, whichever occurs later, and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return the policy or certificate within thirty days of the date of its delivery or within thirty days of its effective date, whichever occurs later, and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in subdivision a of subsection 3 of section 26.1-45-01, the applicant is not satisfied for any reason.

SECTION 7. A new section to chapter 26.1-45 of the North Dakota Century Code is created and enacted as follows:

Insurance counseling programs - Volunteers - Immunity from liability. A person who, on a volunteer basis, provides services or performs duties on behalf of the commissioner of insurance for an insurance counseling program is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission the person who caused the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties as a volunteer and the act or omission did not constitute willful misconduct or gross negligence. This section does not grant immunity to a person causing damage as a result of the negligent operation of a motor vehicle.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 311

HOUSE BILL NO. 1504
(Representatives Wald, Mahoney, Monson, Payne)
(Senators Krauter, Tallackson)

SMALL EMPLOYER AND GROUP HEALTH COVERAGE

AN ACT relating to group health care coverage and small employer employee health insurance coverage; to create and enact two new sections to chapter 26.1-36 of the North Dakota Century Code, relating to copayments, prenatal and children's preventive health services, and loss ratios; to amend and reenact section 26.1-36-37.1 of the North Dakota Century Code, relating to a standard health insurance proof of loss form; and to repeal chapter 26.1-36.2 of the North Dakota Century Code, relating to small employer employee health insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 12 and section 16 of this Act, unless the context otherwise requires:

1. "Actuarial certification" means a written statement by a member of the American academy of actuaries, or other individual acceptable to the commissioner of insurance, that a small employer carrier is in compliance with section 4 of this Act, based upon the person's examination of the small employer carrier, including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

2. "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

3. "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

4. "Basic health benefit plan" means a lower cost health benefit plan developed under section 8 of this Act.

5. "Board" means the board of directors of the program established under section 7 of this Act.

6. "Carrier" means any entity that provides health insurance in this state. The term includes an insurance company, nonprofit health service organization, fraternal benefit society, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

7. "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer; however, claim experience, health status, and duration of coverage are not case characteristics.

8. "Class of business" means all or a separate grouping of small employers established under section 3 of this Act.

9. "Committee" means the health benefit plan committee created under section 8 of this Act.

10. "Control" is as defined in section 26.1-10-01.

11. "Dependent" means a spouse, an unmarried child under the age of nineteen, an unmarried child who is a full-time student under the age of twenty-three and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent as set forth in section 26.1-36-22.

12. "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

13. "Enrollee" means a person covered under a small employer health benefit plan.

14. "Established geographic service area" means a geographic area, as approved by the commissioner of insurance and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

15. a. "Health benefit plan" means any hospital or medical or major medical policy, certificate, or subscriber contract. The term does not include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance.

b. "Health benefit plan" does not include a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance, if the carrier offering that policy or certificate:

(1) Files with the commissioner of insurance on or before March first of each year a certification that contains:

(a) A statement from the carrier certifying that the policy or certificate is being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.

(b) A summary description of the policy or certificate, including the average annual premium rates (or range of premium rates in cases where premiums vary by age, gender, or other factors) charged for the policy and certificate in this state.

(2) When the policy or certificate is offered for the first time in this state on or after the effective date of this Act, files with the commissioner the information and statement required in paragraph 1 at least thirty days before the date the policy or certificate is issued or delivered in this state.

16. "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

17. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty days. An eligible employee or dependent may not be considered a late enrollee, however, if:

a. The individual:

(1) Was covered under qualifying previous coverage at the time of the initial enrollment;

(2) Lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse, or divorce; and

(3) Requests enrollment within ninety days after termination of the qualifying previous coverage.

b. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

c. A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty days after issuance of the court order.

18. "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or which could have been charged or offered, by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

19. "Plan of operation" means the plan of operation of the program established under section 7 of this Act.

20. "Premium" means money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

21. "Producer" means insurance agent or insurance broker.

22. "Program" means the state small employer carrier reinsurance program created under section 7 of this Act.

23. "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under one or more of the following:

    a. Medicare or medicaid.

    b. An employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

    c. An individual health insurance policy, including coverage issued by a health maintenance organization, nonprofit health service corporation, and fraternal benefit society that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least one year.

24. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

25. "Reinsuring carrier" means a small employer carrier which reinsures individuals or groups with the program.

26. "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier under chapters 26.1-17, 26.1-18, and 26.1-47 to provide health care services to covered individuals.

27. "Small employer" means any person that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed no more than twenty-five eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, must be considered one employer.

28. "Small employer carrier" means any carrier that offers health benefit plans covering eligible employees of one or more small employers in this state.

29. "Standard health benefit plan" means a health benefit plan developed under section 8 of this Act.

SECTION 2. Applicability and scope.

1. Sections 1 through 12 and section 16 of this Act apply to any health benefit plan that provides coverage to the employees of a small employer in this state if:

   a. Any portion of the premium or benefits is paid by or on behalf of the small employer;

   b. An eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium; or

   c. The health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the United States Internal Revenue Code.

2. a. Except as provided in subdivision b, carriers that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier and any restrictions or limitations imposed by sections 1 through 12 and section 16 of this Act apply as if all health benefit plans delivered or issued for delivery to small employers in this state by the affiliated carriers were issued by one carrier.

   b. An affiliated carrier that is a health maintenance organization having a certificate of authority may be considered to be a separate carrier for the purposes of sections 1 through 12 and section 16 of this Act.

   c. Unless otherwise authorized by the commissioner, a small employer carrier may not enter into one or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to small employers in this state if the arrangements would result in less than fifty percent of the insurance obligation or risk for the health benefit plans being retained by the ceding carrier.

3. a. A Taft Hartley trust, or a carrier with the written authorization of that trust, may make a written request to the commissioner for a waiver from the application of any of the provisions of subsection 1 of section 4 of this Act with respect to a health benefit plan provided to the trust.

   b. The commissioner may grant the waiver if the commissioner finds that application of subsection 1 of section 4 of this Act, with respect to the trust:

      (1) Would have a substantial adverse effect on the participants and beneficiaries of that trust; and

      (2) Would require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained.

   c. A waiver granted under this section does not apply to a person who participates in the trust as an associate member of an employee organization.

SECTION 3. Establishment of classes of business.

1. A small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs resulting from:

   a. The small employer carrier using more than one type of system for the marketing and sale of health benfit plans to small employers.

   b. The small employer carrier having acquired a class of business from another small employer carrier.

   c. The small employer carrier providing coverage to one or more association groups that meet the requirements set forth in rules adopted by the commissioner.

2. A small employer carrier may establish up to nine separate classes of business under subsection 1.

3. The commissioner may adopt rules to provide for a period of transition in order for a small employer carrier to come into compliance with subsection 2 if the small employer carrier acquires an additional class of business from another small employer carrier.

4. The commissioner may approve the establishment of additional classes of business if the carrier applies to the commissioner and the commissioner determines that the action would enhance the efficiency and fairness of the small employer marketplace.

SECTION 4. Restrictions relating to premium rates.

1. Premium rates for health benefit plans subject to sections 1 through 12 and section 16 of this Act are subject to the following:

   a. The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than fifteen percent.

   b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to the employers under the rating system for that class of business, may not vary from the index rate by more than twenty percent of the index rate.

   c. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:

      (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which

the small employer carrier is actively enrolling new small employers;

(2) Any adjustment due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; however, the adjustment may not exceed fifteen percent annually and must be adjusted pro rata for rating periods of less than one year; and

(3) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

d. Adjustments in rates for claim experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

e. Premium rates for health benefit plans must comply with the requirements of this section notwithstanding any assessment paid or payable by a small employer carrier pursuant to section 7 of this Act.

f. A small employer carrier may utilize industry as a case characteristic in establishing premium rates, but the highest rate factor associated with any industry classification may not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.

g. In the case of health benfit plans delivered or issued for delivery before the effective date of this Act, a premium rate for a rating period may exceed the ranges set forth in subdivisons a and b of subsection 1 for a period of three years following the effective date of this Act. Under this subdivision, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

(2) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the carrier's rate manual for the class of business.

h. (1) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce

premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

(2) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

i. For the purposes of this subsection, a health benefit plan that uses a restricted provider network may not be considered similar coverage to a health benefit plan that does not use a restricted provider network, if the use of the restricted provider network results in substantial differences in claims costs.

j. A small employer carrier may not use case characteristics, other than age, gender, industry, geographic area, family composition, and group size, without prior approval of the commissioner.

k. The commissioner shall adopt rules to:

(1) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;

(2) Prescribe the manner in which case characteristics may be used by small employer carriers; and

(3) Otherwise implement this section.

2. A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration of coverage.

3. The commissioner may suspend for a specified period the application of subdivision a of subsection 1 as to the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that the suspension is reasonable in light of the financial condition of the small employer carrier or, with the prior approval of the committee established pursuant to section 8 of this Act, that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

4. In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of:

a. The extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in

claims costs or actual or expected variation in health status of the employees of the small employer and their dependents;

b. The provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and factors, other than claim experience, that affect changes in premium rates;

c. The provisions relating to renewability of policies and contracts; and

d. The provisions relating to any preexisting condition exclusion.

5. a. Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

b. Each small employer carrier shall file with the commissioner on or before March fifteenth of each year an actuarial certification certifying that the carrier is in compliance with this chapter and that the rating methods of the small employer carrier are actuarially sound. The certification must be in a form and manner and contain information specified by the commissioner. The small employer carrier shall retain a copy of the certification at the carrier's principal place of business.

c. A small employer carrier shall make the information and documentation described in subdivision a of this subsection available to the commissioner upon request. Except in cases of violations of sections 1 through 12 and section 16 of this Act, the information is proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside the department except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction.

SECTION 5. Renewability of coverage.

1. A health benefit plan subject to sections 1 through 12 and section 16 of this Act must be renewable with respect to all eligible employees and dependents, at the option of the small employer, except for any of the following:

a. Nonpayment of the required premiums.

b. Fraud or misrepresentation of the small employer or, with respect to coverage of individual insureds, the insureds or their representatives.

c. Noncompliance with the carrier's minimum participation requirements.

d. Noncompliance with the carrier's employer contribution requirements.

e. Repeated misuse of a provider network provision.

f. The small employer carrier electing to nonrenew all of its health benefit plans delivered or issued for delivery to small employers in this state. In that case the carrier shall:

(1) Provide advance notice of its decision not to renew to the commissioner in each state in which it is licensed; and

(2) Provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside at least one hundred eighty days prior to the nonrenewal of any health benefit plan by the carrier. Notice to the commissioner under this paragraph must be provided at least three working days prior to the notice to the affected small employers.

g. The commissioner finds that the continuation of the coverage would not be in the best interests of the policy holders or certificate holders or would impair the carrier's ability to meet its contractual obligations. In this case the commissioner shall assist affected small employers in finding replacement coverage.

2. A small employer carrier that elects not to renew a health benefit plan under subdivision f of subsection 1 may not write new business in the small employer market in this state for a period of five years from the date of notice to the commissioner.

3. In the case of a small employer carrier doing business in one established geographic service area of the state, this section only applies to the carrier's operations in that service area.

SECTION 6. Availability of coverage.

1. a. As a condition of transacting business in this state with small employers, every small employer carrier shall actively offer small employers at least two health benefit plans. Each small employer carrier shall offer one basic health benefit plan and one standard health benefit plan.

b. (1) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with sections 1 through 12 and section 16 of this Act.

(2) In the case of a small employer carrier that establishes more than one class of business pursuant to section 3 of this Act, the small employer carrier shall maintain and issue to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business if the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan, are not related to the health

status or claim experience of the small employer, and are applied consistently to all small employers applying for coverage in the class of business. The small employer carrier shall provide for the acceptance of all eligible small employers into one or more classes of business. This paragraph does not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

c. A small employer is eligible under subdivision b if it employed at least three or more eligible employees within this state on at least fifty percent of its working days during the preceding calendar quarter.

d. This subsection takes effect one hundred eighty days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to section 8 of this Act; however, if the small employer health reinsurance program created pursuant to section 7 of this Act is not yet operative on that date, this section becomes effective on the date the program begins operation.

2. a. A small employer carrier shall file with the commissioner, in a format and manner prescribed by the commissioner, the basic health benefit plans and the standard health benefit plans to be used by the carrier. A health benefit plan filed under this subdivision may be used by a small employer carrier beginning sixty days after it is filed unless the commissioner disapproves its use.

b. The commissioner after providing notice and an opportunity for a hearing to the small employer carrier, may disapprove, at any time, the continued use by a small employer carrier of a basic or standard health benefit plan if the plan does not meet the requirements of sections 1 through 12 and section 16 of this Act.

3. Health benefit plans covering small employers must comply with the following:

a. A health benefit plan may not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan may not define a preexisting condition more restrictively than:

(1) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately preceding the effective date of coverage; or

(2) A pregnancy existing on the effective date of coverage.

b. A small employer carrier shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to the services, if the qualifying previous coverage was continuous until at least ninety days prior to the

effective date of the new coverage. The period of continuous coverage may not include a waiting period for the effective date of the new coverage applied by the employer or the carrier. This subdivision does not preclude application of an employer waiting period applicable to all new enrollees under the health benefit plan.

c. A health benefit plan may exclude coverage for late enrollees for the greater of eighteen months or for an eighteen-month preexisting condition exclusion; however, if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed eighteen months from the date the individual enrolls for coverage under the health benefit plan.

d. (1) Except as provided in this subdivision, a small employer carrier shall apply requirements used to determine whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, uniformly among all small employers with the same number of eligible employees who are applying for coverage or receiving coverage from the small employer carrier.

(2) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(3) (a) Except as provided in subparagraph b, a small employer carrier, in applying minimum participation requirements with respect to a small employer, shall not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met.

(b) With respect to a small employer, with ten or fewer eligible employees, a small employer carrier may consider employees or dependents who have coverage under another health benefit plan sponsored by the small employer in applying minimum participation requirements.

(4) A small employer carrier may not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

e. (1) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subdivision c.

(2) Except as permitted under subsection 1 and this subsection, a small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible

employee or dependent through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

4. a. A small employer carrier is not required to offer coverage or accept applications under subsection 1 if:

(1) A small employer who applies for coverage is not physically located in the carrier's established geographic service area;

(2) An employee who applies for coverage does not work or reside within the carrier's established geographic service area; or

(3) Within an area the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the commissioner, that, because of its obligations to existing group policyholders and enrollees, it will not have the capacity within its established geographic service area to deliver service adequately to the members of the groups.

b. A small employer carrier that cannot offer coverage pursuant to paragraph 3 of subdivision a may not offer coverage in the applicable area to new cases of employer groups with more than twenty-five eligible employees or to any small employer groups until the later of one hundred eighty days following each refusal or the date on which the carrier notifies the commissioner that it has regained capacity to deliver services to small employer groups.

5. A small employer carrier is not required to provide coverage to small employers pursuant to subsection 1 for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection 1 would place the small employer carrier in a financially impaired condition.

SECTION 7. Small employer carrier reinsurance program.

1. A nonprofit entity known as the North Dakota small employer health reinsurance program is created.

2. a. The program is subject to the supervision and control of the board. The board consists of eight members appointed by the commissioner of insurance and the commissioner or the commissioner's designated representative, who serves as an ex officio member of the board.

b. In selecting the members of the board, the commissioner shall include representatives of small employers and small employer carriers and other individuals determined to be qualified by the commissioner. At least five of the members of the board must be representatives of reinsuring carriers and must be selected from individuals nominated by small employer carriers in this state under rules adopted by the commissioner.

c. The commissioner shall appoint the initial board members as follows: two members to serve a term of two years, three members to serve a term of four years, and three members to serve a term of six years.

Subsequent board members shall serve for a term of three years. A board member's term continues until a successor is appointed.

d. The commissioner shall appoint a person to fill a vacancy in the board. The commissioner may remove a board member for cause.

3. Within sixty days of the effective date of this Act, each small employer carrier shall file with the commissioner the carrier's total number of small employer group enrollees and its net health insurance premium derived from health benefit plans delivered or issued for delivery to small employers in this state in the previous calendar year.

4. Within one hundred eighty days after the appointment of the initial board, the board shall submit a plan of operation to the commissioner and the board also shall submit any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the program to the commissioner. The commissioner, after notice and hearing, may approve the plan of operation if the commissioner determines it to be suitable to assure the fair, reasonable, and equitable administration of the program and to provide for the sharing of program gains or losses on an equitable and proportionate basis in accordance with this section. The plan of operation is effective upon written approval by the commissioner.

5. If the board fails to submit a suitable plan of operation within one hundred eighty days after its appointment, the commissioner, after notice and hearing, shall adopt a temporary plan of operation. The commissioner shall amend or rescind any plan adopted under this section when the board submits a plan of operation which the commissioner approves.

6. The plan of operation must establish procedures:

a. For handling and accounting of program assets and moneys and for an annual fiscal reporting to the commissioner;

b. For selecting an administering carrier and setting forth the powers and duties of the administering carrier;

c. For reinsuring risks in accordance with this section;

d. For collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program;

e. For applying the dollar thresholds contained in this section in the case of carriers that pay or reimburse health care providers through capitation or salary; and

f. For providing for any additional matters necessary for the implementation and administration of the program.

7. The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition thereto, the program may:

a. Enter into contracts as necessary or proper to carry out the provisions and purposes of sections 1 through 12 and section 16 of this Act, including with the approval of the commissioner, entering into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions.

b. Sue or be sued, including taking legal action necessary or proper for recovering any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers or take any legal action necessary to avoid payment of improper claims against the program.

c. Define the health benefit plans for which reinsurance will be provided, and to issue reinsurance policies under sections 1 through 12 and section 16 of this Act.

d. Establish rules for reinsuring risks under the program.

e. Assess reinsuring carriers in accordance with subsection 11, and make advance interim assessments as reasonable and necessary for organizational and interim operating expenses. Interim assessments must be credited as offsets against any regular assessments due following the close of the fiscal year.

f. Appoint appropriate legal, actuarial, and other committees to provide technical assistance in the operation of the program, policy and contract design, and any other function within the authority of the program.

g. Borrow money to effect the purposes of the program. A note or other indebtedness of the program not in default is a legal investment for carriers and may be carried as an admitted asset.

8. A small employer carrier may reinsure with the program as provided for in this subsection:

a. With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

b. A small employer carrier may reinsure an entire employer group within sixty days after the group's coverage begins under a health benefit plan.

c. A small employer carrier may reinsure an eligible employee or dependent within sixty days after coverage begins with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within sixty days after the coverage begins.

d. (1) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee

or dependent as set by the board. The board shall establish retention levels of reinsuring carriers for reinsurance under sections 1 through 12 and section 16 of this Act at an amount of not less than fifty thousand dollars nor greater than one hundred thousand dollars. A reinsuring carrier's liability under this paragraph may not exceed the maximum limit established by the board in a calendar year for a reinsured individual.

(2) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

e. A reinsuring carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

f. A reinsuring carrier or small employer carrier shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

9. a. The board, as part of the plan of operation, shall establish a method for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The method must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The method must provide for the development of base reinsurance premium rates which must be multiplied by the factors set forth in subdivision b to determine the premium rates for the program. The board shall establish the base reinsurance premium rates, subject to the approval of the commissioner, and shall set the rates at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under sections 1 through 12 and section 16 of this Act.

b. Premiums for the program are:

(1) An entire small employer group may be reinsured for a rate that is not greater than one and one-half times the base reinsurance premium rate for the group established under this section.

(2) An eligible employee or dependent may be reinsured for a rate that is not greater than five times the base reinsurance premium rate for the individual established under this section.

c. The board shall review the method established under subdivision a, periodically, including the system of classification and any rating

factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the method. The changes are subject to the approval of the commissioner.

d. The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

10. If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in section 4 of this Act.

11. a. Prior to March first of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

b. Any net loss for the year must be recouped by assessments of small employer carriers.

(1) The board shall establish, as part of the plan of operation, a formula by which to make assessments against small employer carriers. The assessment formula must be based on:

(a) Each small employer carrier's share of the total number of small group enrollees covered in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers; and

(b) Each small employer carrier's share of the total number of small group enrollees covered in the preceding calendar year from newly issued health benefit plans delivered or issued for delivery during the calendar year to small employers in this state by small employer carriers.

(2) The formula established under this subdivision may not result in any small employer carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of the proportion of the small employer carrier's total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers to the total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by all small employer carriers.

(3) With the approval of the commissioner, the board may change the assessment formula established under this subdivision as appropriate. The board may provide for the shares of the assessment base attributable to total number of small employer group enrollees and to the previous year's total to vary during a transition period.

(4) Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for small employer carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. 300, et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

c. (1) Before March first of each year, the board shall determine and file with the commissioner an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(2) If the board determines the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed five percent of total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers, the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within ninety days following the end of the calendar year in which the losses were incurred. The evaluation must include an estimate of future assessments and consideration of the administrative costs of the program, the appropriateness of the premiums charged, the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file a report with the commissioner within ninety days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement amendments to the plan of operation the commissioner determines necessary to reduce future losses and assessments.

d. If assessments exceed net losses of the program, the excess must be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this subdivision, "future losses" includes reserves for incurred but not reported claims.

e. The board shall determine each small employer carrier's proportion of the assessment annually based on annual statements and other reports determined necessary by the board and filed by the small employer carriers with the board.

f. The plan of operation must provide for the imposition of an interest penalty for late payment of assessments.

g. A small employer carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a small employer carrier if the commissioner determines that payment of the assessment would place the small employer carrier in a financially impaired condition. If all or part of an assessment against a small employer carrier is deferred, the amount deferred must be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The small

employer carrier receiving the deferment remains liable to the program for the amount deferred and may not reinsure any individuals or groups with the program until it pays the assessments.

12. Neither the participation in the program, the establishment of rates, forms, or procedures, nor any other joint or collective action required by sections 1 through 12 and section 16 of this Act may be the basis of any legal action, criminal or civil liability, or penalty against the program or any small employer carriers either jointly or separately.

13. Assessments for the program are exempt from taxes.

14. The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall consider the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to the small employer, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

15. Nothing in sections 1 through 12 and section 16 of this Act may be construed to require an industrywide trade association plan operating under a master group policy to market, offer, or sell a health benefit plan to employers who are not members of the association. An association which on January 1, 1993, and at least ten years prior to that date, markets, offers, or sells health benefit plans to all members of the association, and does not market, offer, or sell any other individual or group health benefit plan is exempt from sections 1 through 12 and section 16 of this Act. For purposes of sections 1 through 12 and section 16 of this Act, "trade association" means an association with a membership of not less than fifty small employers, each employing more than twenty-five employees serving a single industry, business, or trade that has been actively in existence for at least one year, has a constitution and bylaws or other governing documents, has been formed in good faith for purposes other than for obtaining insurance, and does not condition membership in the association on health status. Notwithstanding this subsection, nothing in this section may be construed to exempt a small employer carrier from sections 1 through 12 and section 16 of this Act.

SECTION 8. Health benefit plan committee.

1. The commissioner of insurance shall appoint a health benefit plan committee composed of representatives of carriers, small employers, employees, health care providers, and producers.

2. The committee shall recommend the form and level of coverage to be made available by a small employer carrier pursuant to section 6 of this Act.

3. The committee shall recommend benefit levels, cost-sharing levels, exclusions, and limitations for the basic health benefit plan and the standard health benefit plan. The committee shall design a basic health benefit plan and a standard health benefit plan each of which contain benefit and cost-sharing levels that are consistent with the basic method

of operation and the benefits of health maintenance organizations, including any restrictions imposed by federal law.

a. The plans recommended by the committee may include cost containment features such as:

(1) Utilization review of health care services, including review of medical necessity of hospital and physician services;

(2) Case management;

(3) Selective contracting with hospitals, physicians, and other health care providers;

(4) Reasonable benefit differentials applicable to providers that do or do not participate in arrangements using restricted network provisions; and

(5) Other managed care provisions.

b. The committee shall submit the health benefit plans described in this subsection to the commissioner for approval within one hundred eighty days after the appointment of the committee.

SECTION 9. Periodic market evaluation. In consultation with members of the committee, the board shall study the effectiveness of sections 1 through 12 and section 16 of this Act at least every three years and report on that study to the commissioner. The report must analyze the effectiveness of sections 1 through 12 and section 16 of this Act in promoting rate stability, product availability, and coverage affordability. The report must address whether carriers and producers are fairly and actively marketing and issuing health benefit plans to small employers in fulfillment of the purposes of sections 1 through 12 and section 16 of this Act. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small group health insurance marketplace and recommendations for market conduct or other regulatory standards or action.

SECTION 10. Waiver of certain state laws. Any law requiring the coverage of a health care service or benefit, or requiring the reimbursement, utilization, or inclusion of a specific category of licensed health care practitioner, does not apply to a basic health benefit plan delivered or issued for delivery to small employers in this state under sections 1 through 12 and section 16 of this Act.

SECTION 11. Standards to assure fair marketing.

1. Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan and a standard health benefit plan.

2. a. A small employer carrier or producer may not engage in the following activities, directly or indirectly:

(1) Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

(2) Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

b. Subdivision a does not apply to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

3. a. A small employer carrier may not enter into any contract, agreement, or arrangement, directly or indirectly, with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer.

b. Subdivision a does not apply to a compensation arrangement that provides compensation to a producer on the basis of percentage of premium, provided the percentage does not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

4. A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a basic or standard health benefit plan.

5. No small employer carrier may terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status, claims experience, occupation, or geographic location of the small employers placed by the producer with the small employer carrier.

6. No small employer carrier or producer may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

7. Denial by a small employer carrier of an application for coverage from a small employer must be in writing and must state the reason or reasons for the denial.

8. A violation of this section by a small employer carrier or a producer is an unfair trade practice under section 26.1-04-03.

9. If a small employer carrier enters into a contract, agreement, or other arrangement with a third-party administrator to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator is subject to this section as if it were a small employer carrier.

SECTION 12. Restoration of terminated coverage. The commissioner may adopt rules to require small employer carriers, as a condition of transacting business with small employers in this state after the effective date of this Act, to reissue a health benefit plan to any small employer whose health benefit plan has been terminated or has not been renewed by the carrier after January 1, 1994. The rules may contain terms for the reissue of coverage as the commissioner determines necessary to provide continuity of coverage to small employers.

SECTION 13. Group health care coverage - Cooperative agreement allowed. The commissioner of insurance shall adopt rules to enable groups to form a cooperative that would allow those groups to purchase group health insurance coverage as one entity.

SECTION 14. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Preventive health care - Copayments. The standard health benefit plan developed under section 8 of this Act must provide coverage for prenatal care visits for a covered person and recommended immunizations and well child visits for a covered person from birth to the age of five years. The plan may impose only a five dollar copayment for each prenatal care visit and a two dollar copayment for each well child visit or immunization visit.

SECTION 15. AMENDMENT. Section 26.1-36-37.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-37.1. Standard health insurance proof of loss form - Claim payment time limits. The commissioner shall prescribe by rule a standard health insurance proof of loss and claim form for use in filing proof of loss and a claim for all health care services. For purposes of this section, "health care service" means any service included in providing an individual with medical, dental, or hospital care or any service incident to providing medical, dental, or hospital care as well as any service provided to prevent, alleviate, care, or heal human illness or injury. After receipt of a health insurance proof of loss form, the insurer shall, within fifteen business days, pay the claim or that portion of the claim that is not contested, deny the claim, or make an initial request for additional information. If a claim or a portion of a claim is contested, the insured or the insured's assignee must be notified in writing that the claim is contested and the reasons for the contest. Nothing in this notification precludes the insurer from denying the claim in whole or in part, for other reasons at a later date. Within fifteen business days of the receipt of the information initially requested, the insurer shall pay or deny the claim.

SECTION 16. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Loss ratios - Rules. For all policies providing hospital, surgical, medical, or major medical benefit, an insurance company, a nonprofit health service corporation, a fraternal benefit society, and any other entity providing a plan of health insurance or health benefit subject to state insurance regulation shall return benefits to group policyholders in the aggregate of not less than seventy-five percent of premium received and to individual policyholders in the aggregate of not less than sixty-five percent of premium received. The commissioner shall adopt rules to establish these minimum standards on the basis of incurred

claims experienced and earned premiums for the entire period for which rates are computed to provide coverage in accordance with accepted actuarial principles and practices.

SECTION 17. REPEAL. Chapter 26.1-36.2 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 312

HOUSE BILL NO. 1511
(Representatives Porter, Boucher)
(Senators Evanson, Robinson)
(Approved by the Delayed Bills Committee)

NONPROFIT HEALTH SERVICE CORPORATIONS

AN ACT to amend and reenact subsection 8 of section 26.1-38.1-02 of the North Dakota Century Code, relating to including nonprofit health service corporations in the definition of member insurer under the life and health guaranty association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 8 of section 26.1-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

8. "Member insurer" means any insurer, including a nonprofit health service corporation, licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 26.1-38.1-01, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

   a. A health maintenance organization;

   b. A fraternal benefit society;

   c. A mandatory state pooling plan;

   d. A mutual assessment company or any entity that operates on an assessment basis;

   e. A nonprofit health service corporation that is participating in a reinsurance plan that has been approved by the commissioner as an alternative to participation in the state guaranty association;

   f. An insurance exchange; or

~~f.~~ g. Any entity similar to any of the above.

Approved April 28, 1993
Filed April 30, 1993

[1] NOTE: Section 26.1-38.1-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 313

SENATE BILL NO. 2401
(Senator Keller)

AUTOMOBILE INSURANCE BENEFIT PAYEE

AN ACT to create and enact a new section to chapter 26.1-40 of the North Dakota Century Code, relating to payment of automobile insurance benefits to a policyholder's family member.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

Payment of benefits to family members of a policyholder. An automobile insurance policy that provides coverage for bodily injury may not contain any provision limiting payment of benefits or reducing the amount of benefits payable to a person because the person to whom benefits are being paid under that policy is related to the policyholder by blood, marriage, or adoption, or is a foster child, and resides in the same household as the policyholder.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 314

HOUSE BILL NO. 1415
(Representatives Wald, Rydell, Payne)
(Senators Nalewaja, Thane)

PARTNERSHIP FOR LONG-TERM CARE PROGRAM

AN ACT to provide a partnership for long-term care program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of insurance.
2. "Department" means the department of human services.
3. "Secretary" means the secretary of the United States department of health and human services.

SECTION 2. Partnership for long-term care program. The commissioner shall coordinate a partnership for long-term care program, by which private insurance and medicaid funds may be combined to finance long-term care. Under the program, an individual may purchase a long-term care insurance policy. The assets of that individual, to the extent those assets do not exceed the amount of long-term care insurance benefits paid as provided in section 3 of this Act, may not be considered by the department as an available asset in a determination of that individual's eligibility for medicaid or of any subsequent claim for recovery by the state of a payment for medical services.

SECTION 3. Long-term care insurance benefit payments - Asset exclusion - Rules. The department shall seek appropriate amendments to its medicaid rules and state plan to allow protection of assets under section 2 of this Act. The protection must be provided, to the extent approved by the secretary, for a purchaser of an approved long-term care insurance policy delivered, issued for delivery, or renewed on or after January 1, 1994. The department shall count insurance benefit payments toward asset exclusion to the extent the payments are for nursing home care or home-based or community-based services, and are for services provided after the individual meets the coverage requirements for long-term care benefits established for this program by the department. The department shall adopt rules to determine the coverage requirements for long-term care benefits.

SECTION 4. Approval of long-term care policies - Rules. The commissioner may approve a long-term care insurance policy only if the policy alerts the purchaser to the availability of consumer information and public education provided under section 5 of this Act, offers the option of home-based and community-based services in lieu of nursing home care, provides, within total benefit limits, payment of necessary covered services, provides for the recordkeeping and an explanation of benefit reports on insurance payments which count toward medicaid asset exclusion, and provides management information and reports necessary to document the extent of

medicaid asset protection offered and to evaluate the partnership for long-term care program. The commissioner may adopt and implement rules relative to coverages provided by the partnership program.

SECTION 5. Outreach program. The commissioner shall establish a program to educate consumers about long-term care, mechanisms for financing long-term care, availability of long-term care insurance, and the asset protection provided by sections 2 and 3 of this Act.

SECTION 6. Funding. The department shall seek federal approval and funds necessary to carry out this Act. The department shall assist the commissioner in preparing the information required by subsections 6, 7, and 8 of section 7 of this Act.

SECTION 7. Report to legislative council and governor. The commissioner shall annually report to the legislative council and to the governor on the progress of the partnership for long-term care program. The report must include:

1. The success in implementing the public and private partnership.
2. The number of long-term care insurance policies approved.
3. The number, age, and financial circumstances of individuals purchasing policies.
4. The number of individuals seeking consumer information services.
5. The extent and type of benefits paid under policies that may count toward medicaid resource protection.
6. Estimates of impact on present and future medicaid expenditures.
7. The cost effectiveness of the program.
8. A determination regarding the appropriateness of continuing the program.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 315

SENATE BILL NO. 2536
(Senators Thane, Kelly, Krebsbach, Mathern, Mushik, Nalewaja)
(Approved by the Delayed Bills Committee)

LONG-TERM CARE INSURANCE COMPARISON

AN ACT to create and enact a new section to chapter 26.1-45 of the North Dakota Century Code, relating to adoption of long-term care benefits comparison guides by the commissioner of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-45 of the North Dakota Century Code is created and enacted as follows:

Adoption of long-term care benefits comparison guides by commissioner. The commissioner of insurance shall adopt rules to create a long-term care benefits comparison guide to be presented at the point of sale between the client and agent. The guide must include information regarding nursing home coverage and alternatives to nursing home coverage.

Approved March 30, 1993
Filed April 1, 1993

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 316

SENATE BILL NO. 2080
(Judiciary Committee)
(At the request of the Supreme Court)

DISTRICT JUDGE VACANCIES

AN ACT to amend and reenact section 27-05-02.1 of the North Dakota Century Code, relating to judgeship vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

[1] **27-05-02.1. Vacancy in office of district judge - Transfer of judgeships - Abolition of offices - Hearing.**

1. Notwithstanding section 44-02-03, when a vacancy occurs in the office of district court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the governor and in consultation with ~~district court~~ the judges and attorneys in the affected judicial district, whether ~~or not~~ that office is necessary for effective judicial administration or whether a district judgeship may be transferred to the location to fulfill a need for judicial services. The supreme court may, consistent with that determination, order that:

   a. The vacancy be filled in the manner provided pursuant to chapter 27-25;

   b. The vacant office be abolished, with or without transfer of a district judgeship as provided by subsection 5; or

   c. The vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration, and that the vacancy be filled in the manner provided pursuant to chapter 27-25 with respect to that judicial district.

2. Subject to subsection 3, the supreme court may, after consultation with district court judges and attorneys in the affected judicial district, abolish one or more offices of district court judge if the supreme court determines that the office is not necessary for effective judicial administration and abolition of the office is necessary to reduce the number of district court judges as required in subsection 2 of section 27-05-01. At least one year before the end of the term of office of a district court judge holding the judgeship, the supreme court shall notify

[1] NOTE: Section 27-05-02.1 was also amended by section 1 of Senate Bill No. 2032, chapter 317.

the judges of the affected judicial district of a determination that the judgeship will be abolished. The abolition of an office of district court judge under this subsection is effective at the end of the term of office of the district court judge holding that judgeship. The district court judge holding the judgeship to be abolished may petition the supreme court, within thirty days after receiving notice that the judgeship will be abolished, for a hearing on the determination. The supreme court shall hold the hearing within thirty days after receipt of the petition. Within thirty days after the hearing, the supreme court shall affirm, reverse, or modify its previous determination.

3. The authority conferred upon the supreme court in subsection 2 may be exercised:

   a. From July 1, 1995, until June 30, 1997, if on July 1, 1995, the number of district court judges is more than forty-eight;

   b. From July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than forty-six; and

   c. From July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than ~~forty-four~~ forty-two.

4. For purposes of subsection 1, a vacancy is deemed to have occurred in the office of district judge if the judge in the affected office declares the intention not to seek reelection or if a judge fails to timely file a petition for candidacy with the secretary of state pursuant to section 16.1-11-06. The secretary of state shall immediately notify the supreme court if a judge fails to timely file a petition. The supreme court may establish by rule procedures for providing notice of the intention not to seek reelection. The supreme court, within ninety days of receiving notice of a judge's intention not to seek reelection or within twenty-one days of receiving notice that a judge has failed to timely file a petition for candidacy, shall determine whether the office is necessary for effective judicial administration. The supreme court shall consult with the judges and attorneys of the affected judicial district in making the determination. The supreme court, consistent with that determination, may order any disposition available under subsection 1. The supreme court shall notify the secretary of state of its determination. If the vacant office is abolished, an election for that office may not be held. This subsection applies to notice given by or the failure to timely file a petition for candidacy by a district judge otherwise eligible for reelection to the office of district judge or by a county judge otherwise eligible for election in 1994 to the district judgeship replacing the county judgeship.

5. The supreme court may transfer a district judgeship to any location in which a judge is necessary for effective judicial administration.

6. The supreme court shall notify the governor of its determinations made pursuant to this section.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 317

SENATE BILL NO. 2032
(Legislative Council)
(Interim Court Services Committee)

DISTRICT COURT JUDGES NUMBERS

AN ACT to amend and reenact section 27-05-02.1 of the North Dakota Century Code, relating to the number of district court judges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-05-02.1 of the North Dakota Century Code is amended and reenacted as follows:

[1] **27-05-02.1. Vacancy in office of district judge - Abolition of offices - Hearing.**

1. Notwithstanding section 44-02-03, when a vacancy occurs in the office of district court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the governor and in consultation with district court judges and attorneys in the affected judicial district, whether or not that office is necessary for effective judicial administration. The supreme court may, consistent with that determination, order that:

   a. The vacancy be filled in the manner provided pursuant to chapter 27-25;

   b. The vacant office be abolished; or

   c. The vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration, and that the vacancy be filled in the manner provided pursuant to chapter 27-25 with respect to that judicial district.

2. Subject to subsection 3, the supreme court may, after consultation with district court judges and attorneys in the affected judicial district, abolish one or more offices of district court judge if the supreme court determines that the office is not necessary for effective judicial administration and abolition of the office is necessary to reduce the number of district court judges as required in subsection 2 of section 27-05-01. At least one year before the end of the term of office of a district court judge holding the judgeship, the supreme court shall notify the judges of the affected judicial district of a determination that the judgeship will be abolished. The abolition of an office of district court

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[1] NOTE: Section 27-05-02.1 was also amended by section 1 of Senate Bill No. 2080, chapter 316.

judge under this subsection is effective at the end of the term of office of the district court judge holding that judgeship. The district court judge holding the judgeship to be abolished may petition the supreme court, within thirty days after receiving notice that the judgeship will be abolished, for a hearing on the determination. The supreme court shall hold the hearing within thirty days after receipt of the petition. Within thirty days after the hearing, the supreme court shall affirm, reverse, or modify its previous determination.

3. The authority conferred upon the supreme court in subsection 2 may be exercised:

   a. From July 1, 1995, until June 30, 1997, if on July 1, 1995, the number of district court judges is more than forty-eight;

   b. From July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than forty-six; and

   c. From July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than ~~forty-four~~ forty-two.

4. The supreme court shall notify the governor of its determinations made pursuant to this section.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 318

SENATE BILL NO. 2033
(Legislative Council)
(Interim Court Services Committee)

DISTRICT JUDGE CHAMBERS AND RESIDENCE

AN ACT to amend and reenact section 27-05-08 of the North Dakota Century Code as amended by section 85 of chapter 326 of the 1991 Session Laws of North Dakota, relating to the chambers and residency of district court judges; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-05-08 of the North Dakota Century Code, as amended by section 85 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

27-05-08. Chambers - Residence.

1. The locations of the chambers of the district judges in each of the respective districts shall be as determined by rule of the supreme court. However, not more than seventy percent of the chambers of the district judges may be located in cities with a population of more than ~~seven~~ ten thousand ~~five hundred~~.

2. Each district judge shall reside within the ~~county~~ district where the judge's chambers are located, and, for the purposes of this section, the chief justice of the supreme court shall designate the respective chambers within the district to which each district judge is assigned.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 2, 1995.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 319

SENATE BILL NO. 2529
(Senators Tennefos, Robinson)
(Representative R. Berg)

LESSEE LIABILITY AND VENUE

AN ACT to create and enact a new subdivision to subsection 2 of section 27-08.1-01 and a new section to chapter 47-16 of the North Dakota Century Code, relating to venue of small claims courts and liability of tenants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 27-08.1-01 of the North Dakota Century Code is created and enacted as follows:

If the defendant is an individual and the claim arose as the result of the defendant's lease of real property, in the county where the defendant resides or in the county where the real property is located.

SECTION 2. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Eviction - Lessee liable for rent during term of lease. A lessee evicted according to law is liable for rent during the remainder of the term of the lease. However, this section does not relieve the landlord of the duty to mitigate damages.

Approved March 31, 1993
Filed April 1, 1993

CHAPTER 320

SENATE BILL NO. 2356
(Senators W. Stenehjem, B. Stenehjem)
(Representative Kretschmar)

JURY QUALIFICATION AND DISQUALIFICATION

AN ACT to amend and reenact subsection 1 of section 27-09.1-07 and subsection 2 of section 27-09.1-08 of the North Dakota Century Code, relating to jury qualification forms and disqualification from jury service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 1 of section 27-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. From time to time and in a manner prescribed by the court, the clerk shall mail to the prospective juror a qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The juror qualification form ~~shall~~ must be ~~subject to approval~~ approved by the state court administrator as to matters of form and ~~shall~~ must elicit the name, address of residence, and age of the prospective juror and whether the prospective juror:

   a. Is a citizen of the United States and a resident of the county;

   b. Is able with reasonable accommodation to communicate and understand the English language;

   c. Has any physical or mental disability ~~impairing the prospective juror's capacity~~ that may require reasonable accommodation to render satisfactory jury service; and

   d. Has lost the right to vote because of imprisonment resulting from conviction of a felony (section 27-09.1-08).

   The juror qualification form ~~shall~~ must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both. Notarization of the juror qualification form ~~shall~~ is not ~~be~~ required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and shall indicate that fact and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk

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[1] NOTE: Section 27-09.1-07 was also amended by section 9 of House Bill No. 1077, chapter 89.

shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the clerk within ten days after its second receipt.

SECTION 2. AMENDMENT. Subsection 2 of section 27-09.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. A prospective juror is disqualified to serve on a jury if the prospective juror:

   a. Is not a citizen of the United States and a resident of the state and county;

   b. Is not at least eighteen years old;

   c. Is unable with reasonable accommodation to communicate and understand the English language;

   d. Is incapable, by reason of ~~his~~ a physical or mental disability and with reasonable accommodation, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion; or

   e. Has lost the right to vote because of imprisonment in the penitentiary (section 12.1-33-01) or conviction of a criminal offense which by special provision of law disqualified ~~him~~ the prospective juror for such service.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 321

SENATE BILL NO. 2354
(Senator W. Stenehjem)
(Representative Kretschmar)

DELINQUENT CHILD DISPOSITION

AN ACT to create and enact two new subsections to section 27-20-31 of the North Dakota Century Code, relating to the disposition of a delinquent child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 27-20-31 of the North Dakota Century Code are created and enacted as follows:

Ordering the child to make monetary restitution to the victim of the offense or to complete a specified number of hours of community service as determined by the court, or both.

Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules or policies adopted by the supreme court.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 322

SENATE BILL NO. 2140
(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

INTERSTATE RENDITION OF JUVENILES

AN ACT to create and enact a new section to chapter 27-22 of the North Dakota Century Code, relating to interstate rendition of juvenile delinquents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 27-22 of the North Dakota Century Code is created and enacted as follows:

Interstate rendition of juvenile delinquents. The governor is authorized and directed to execute, with any other state or states legally joining the same, an amendment to the interstate compact on juveniles concerning interstate rendition of juveniles alleged to be delinquent. This amendment provides additional remedies and is binding only as among and between those party states that specifically execute this amendment. All provisions and procedures of articles V and VI of the interstate compact on juveniles must be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law, must be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such cases must be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact must be forwarded by the judge of the court in which the petition has been filed.

Approved March 4, 1993
Filed March 5, 1993

JUDICIAL PROCEDURE, CIVIL

CHAPTER 323

SENATE BILL NO. 2542
(Senators W. Stenehjem, Maxson)
(Representatives Dorso, Mahoney)
(Approved by the Delayed Bills Committee)

ASBESTOS CLAIM LIMITATIONS

AN ACT to create and enact a new section to chapter 28-01 of the North Dakota Century Code, relating to limitation of actions for certain asbestos claims by public building owners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-01 of the North Dakota Century Code is created and enacted as follows:

Limitation of action for asbestos claims.

1. The legislative assembly finds that it is in the interest of the general public, particularly those persons who may bring claims regarding materials containing asbestos in public buildings and those against whom the claims may be brought, to set a specific date by which public building owners must bring a cause of action for removal or other abatement costs associated with the presence of asbestos in their buildings. By enactment of this statute of limitations, the legislative assembly does not imply that suits would otherwise be barred by an existing limitations period.

2. Notwithstanding any other law to the contrary, any action to recover costs for removal and replacement of asbestos or materials containing asbestos from a public building; to recover costs for other measures taken to locate, correct, or ameliorate any problem related to asbestos in a public building; or for reimbursement for removal and replacement, correction, or amelioration of an asbestos problem in a public building, must be commenced prior to August 1, 1997. Any such action which would otherwise be barred before August 1, 1997, as a result of expiration of the applicable period of limitation, is revived or extended. An asbestos action revived or extended under this subsection must be commenced prior to August 1, 1997.

3. For purposes of this section, "public building" means any building owned by any county, city, township, school district, park district, or any other unit of local government, the state or any agency, industry, institution, board, or department thereof.

Approved May 5, 1993
Filed May 6, 1993

CHAPTER 324

SENATE BILL NO. 2351
(Senators Tallackson, Dotzenrod, Goetz)
(Representatives R. Berg, Hokana, Payne)

TORT REFORM

AN ACT to create and enact chapter 28-01.3 of the North Dakota Century Code, relating to products liability; to amend and reenact section 13 of chapter 404 of the 1987 Session Laws of North Dakota and sections 32-03.2-02 and 32-03.2-11 of the North Dakota Century Code, relating to comparative fault and punitive damages; and to repeal section 15 of chapter 404 of the 1987 Session Laws of North Dakota, and chapter 28-01.1 and section 32-03.2-03 of the North Dakota Century Code, relating to the expiration date of legislation concerning tort liability, products liability, and comparative fault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13 of chapter 404 of the 1987 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 13. REPEAL. ~~If this Act does not contain an expiration date, North Dakota Century Code sections~~ Section 9-10-07 of the North Dakota Century Code and section 32-03-07 of the North Dakota Century Code as amended by section 1 of 1987 Senate Bill No. 2058, as approved by the fiftieth legislative assembly, are hereby repealed.

SECTION 2. AMENDMENT. Section 32-03.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-03.2-02. Modified comparative fault. Contributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property unless the fault was as great as the combined fault of all other persons who contribute to the injury, but any damages allowed must be diminished in proportion to the amount of contributing fault attributable to the person recovering. The court may, and when requested by any party, shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of fault attributable to each person, whether or not a party, who contributed to the injury. The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that party, except that any persons who act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. Under this section, fault includes negligence, malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, ~~and~~ failure to avoid injury~~. Under this section, fault does not include~~

~~any~~, and product liability, including product liability involving negligence or strict liability or breach of warranty for product defect.

SECTION 3. AMENDMENT. Section 32-03.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-03.2-11. When court or jury may give exemplary damages.

1. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty by clear and convincing evidence of oppression, fraud, or malice, actual or presumed, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

2. If either party so elects, the trier of fact shall first determine whether compensatory damages are to be awarded before addressing any issues related to exemplary damages. Evidence relevant only to the claim for exemplary damages is not admissible in the proceeding on liability for compensatory damages. If an award of compensatory damages has been made, the trier of fact shall determine whether exemplary damages are to be awarded.

3. Evidence of a defendant's financial condition or net worth is not admissible in the proceeding on exemplary damages.

4. If the trier of fact determines that exemplary damages are to be awarded, the amount of exemplary damages may not exceed two times the amount of compensatory damages or two hundred fifty thousand dollars, whichever is greater; provided, however, that no award of exemplary damages may be made if the claimant is not entitled to compensatory damages. In a jury trial, the jury may not be informed of the limit on damages contained in this subsection. Any jury award in excess of this limit must be reduced by the court.

5. In order for a party to recover exemplary damages, the finder of fact shall find by clear and convincing evidence that the amount of exemplary damages awarded is consistent with the following principles and factors:

   a. Whether there is a reasonable relationship between the exemplary damage award claimed and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred;

   b. The degree of reprehensibility of the defendant's conduct and the duration of that conduct; and

c. Any of the following factors as to which evidence is presented:

(1) The defendant's awareness of and any concealment of the conduct;

(2) The profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; and

(3) Criminal sanctions imposed on the defendant for the same conduct that is the basis for the exemplary damage claim, these to be taken into account if offered in mitigation of the exemplary damage award.

SECTION 4. Chapter 28-01.3 of the North Dakota Century Code is created and enacted as follows:

28-01.3-01. Limitation on ad damnum clause. If a complaint filed in a products liability action prays for a recovery of money in an amount equal to or less than fifty thousand dollars, the amount must be stated. If a recovery of money in an amount greater than fifty thousand dollars is demanded, the pleading must state merely that recovery of reasonable damages in an amount greater than fifty thousand dollars is demanded. This action may be superseded by an amendment to the North Dakota Rules of Civil Procedure.

28-01.3-02. Alteration or modification of product is defense to action. No manufacturer or seller of a product may be held liable in any products liability action where a substantial contributing cause of the injury, death, or damage to property was an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the purpose, use, function, design, or intended use or manner of use of the product from that for which the product was originally designed, tested, or intended.

28-01.3-03. Liability of nonmanufacturing sellers.

1. In any products liability action maintained against a seller of a product who did not manufacture the product, the seller shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing the personal injury, death, or damage to property.

2. After the plaintiff has filed a complaint against the manufacturer and the manufacturer has or is required to have answered or otherwise pleaded, the court shall order the dismissal of the claim against the certifying seller, unless the plaintiff can show any of the following:

a. That the certifying seller exercised some significant control over the design or manufacture of the product, or provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the personal injury, death, or damage to property.

b. That the certifying seller had actual knowledge of the defect in the product which caused the personal injury, death, or damage to property.

c. That the certifying seller created the defect in the product which caused the personal injury, death, or damage to property.

3. The plaintiff may at any time prior to the beginning of the trial move to vacate the order of dismissal and reinstate the certifying seller if the plaintiff can show any of the following:

a. That the applicable statute of limitation bars a product liability action against the manufacturer of the product allegedly causing the injury, death, or damage.

b. That the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect.

28-01.3-04. Indemnity of seller. If a product liability action is commenced against a seller, and it is alleged that a product was defectively designed, contained defectively manufactured parts, had insufficient safety guards, or had inaccurate or insufficient warning; that such condition existed when the product left the control of the manufacturer; that the seller has not substantially altered the product; and that the defective condition or lack of safety guards or adequate warnings caused the injury or damage complained of; the manufacturer from whom the product was acquired by the seller must be required to assume the cost of defense of the action, and any liability that may be imposed on the seller. The obligation to assume the seller's cost of defense should also extend to an action in which the manufacturer and seller are ultimately found not liable.

28-01.3-05. Determination of defective product. No product may be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.

28-01.3-06. Definitions. As used in this chapter:

1. "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or consumer. The term includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer.

2. "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

3. "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.

4. "Unreasonably dangerous" means that the product is dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer, or user of that product in that community considering the product's characteristics, propensities, risks, dangers, and uses, together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer.

SECTION 5. REPEAL. Section 15 of chapter 404 of the 1987 Session Laws of North Dakota, chapter 28-01.1 of the North Dakota Century Code, and section 32-03.2-03 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved March 31, 1993
Filed April 1, 1993

CHAPTER 325

SENATE BILL NO. 2087
(Judiciary Committee)
(At the request of the Supreme Court)

CIVIL ACTION VENUE

AN ACT to create and enact a new section to chapter 28-04 of the North Dakota Century Code, relating to venue of trials in civil actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-04 of the North Dakota Century Code is created and enacted as follows:

Venue of trials. Notwithstanding any other provision of this chapter, if the county seats of adjoining counties are less than ten miles apart and are located in the same judicial district, the district court or county court may hold any trial or hearing in either county. In the case of a jury trial, the jury panel must be composed of residents of the county of venue as would otherwise be determined under this chapter even if the case is not tried in that county.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 326

HOUSE BILL NO. 1453
(Representatives Pyle, Ness)

NONPROFIT PENSION PLAN EXEMPTION

AN ACT to amend and reenact subsection 3 of section 28-22-03.1 of the North Dakota Century Code, relating to exemptions from judicial process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Pensions, annuity policies or plans, and life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and pension or retirement plans sponsored by nonprofit corporations or associations organized and operated exclusively for one or more of the purposes specified in 26 U.S.C. 501(c)(3), and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 327

HOUSE BILL NO. 1336
(Representatives St. Aubyn, Oban, Soukup)
(Senators Dotzenrod, Keller)

ENERGY CONSERVATION STANDARDS

AN ACT to amend and reenact subdivision a of subsection 1 of section 28-32-01, sections 54-21.2-03, and 54-21.2-04 of the North Dakota Century Code, relating to exclusions from the definition of administrative agency and the state energy code for new building construction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

a. The office of management and budget except with respect to rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

SECTION 2. AMENDMENT. Section 54-21.2-03 of the North Dakota Century Code is amended and reenacted as follows:

54-21.2-03. Energy conservation standards. The standards for energy conservation in new building construction, for thermal design conditions and criteria for buildings, and for adequate thermal resistance in regard to the design and selection of mechanical, electrical service, and illumination systems and equipment which will enable the effective use of energy in new buildings, must at least equal the energy conservation code based on the ~~American Society of Heating, Refrigerating, and Air Conditioning Engineers Standard 90-75 and any amendments or additions thereto.~~ Council of American Building Officials Model Energy Code, 1989 Edition. The office of management and budget shall adopt rules to implement, update, and amend the Model Energy Code.

SECTION 3. AMENDMENT. Section 54-21.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-21.2-04. Inspections. All construction or work for which a permit is required pursuant to section 11-33-18, subsection 6 of section 40-05-02, or other

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[1] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1264, and 1400 and Senate Bill Nos. 2215 and 2228, chapters 135, 186, 328, 80, 173, and 236.

similar grant of authority is subject to inspection by the local building inspector. ~~Each political subdivision of the state~~ The governing body of a city, county, or township that elects to administer and enforce an energy conservation standard shall adopt and enforce the ~~provisions of this chapter~~ state energy conservation standards. The state energy conservation standards may be amended by cities, counties, and townships to conform to local needs. No construction ~~shall~~ may be covered without inspection approval, and there must be a final inspection on all buildings when completed and ready for occupancy. The building inspector may cause any structure to be reinspected.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 328

HOUSE BILL NO. 1264
(Representatives Oban, St. Aubyn)

STATE BUILDING CODE

AN ACT to amend and reenact subdivision a of subsection 1 of section 28-32-01 and section 54-21.3-03 of the North Dakota Century Code, relating to exclusions from the definition of administrative agency and the state building code; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

SECTION 2. AMENDMENT. Section 54-21.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-03. State building code - Amendments.

1. The state building code consists of the ~~most recently published~~ Uniform Building Code with any existing supplements ~~including~~ and the Uniform Mechanical Code with any existing supplements as referenced by the Uniform Building Code, except that section 504(f) of the Uniform Mechanical Code is amended to read as follows:

Section 504(f). LPG Appliances.

Liquefied petroleum gas burning appliances, both automatically and manually controlled, may be installed in basements or similar locations only if (a) the appliances are of an American gas association-approved type and installed in accordance with national fire protection association pamphlets 54 and 58, (b) automatically controlled appliances are equipped with safety shutoff devices of the

[1] NOTE: Subsection 1 of section 28-32-01 was also amended by House Bill Nos. 1047, 1193, 1336, and 1400 and amended by Senate Bill Nos. 2215 and 2228, chapters 135, 186, 327, 80, 173, and 236.

complete shutoff type, and (c) gas piping has been pressure tested and proven to be gastight.

~~This code must be implemented by and may be amended by rules adopted by the~~ The director of the office of management and budget ~~under chapter 28-32~~ shall adopt rules to implement and periodically update the code and may adopt rules to amend the code.

2. For the purposes of manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].

3. The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on August 1, 1994.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 329

HOUSE BILL NO. 1079
(Judiciary Committee)
(At the request of the Office of Administrative Hearings)

ADMINISTRATIVE PRACTICES

AN ACT to amend and reenact subsection 8 of section 28-32-01, subsections 1 and 3 of section 28-32-05, subsection 1 of section 28-32-14, subsection 6 of section 28-32-15, and subsections 2, 4, and 6 of section 28-32-17 of the North Dakota Century Code, relating to administrative practices and procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Party" means each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 28-32-05 of the North Dakota Century Code are amended and reenacted as follows:

1. a. For contested cases involving a complaint and a specific-named respondent, a complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of a proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.

   b. When a complaint is filed, the appropriate administrative agency shall serve a copy of the complaint ~~and a notice for hearing~~ upon the respondent personally or by certified mail, as the agency may direct, at least forty-five days before the time specified for a hearing on the complaint.

   c. Unless a statute or rule otherwise requires or specifically provides for suspension or revocation without a hearing, the administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice for hearing upon the respondent personally or by certified mail, as the agency may direct, at least twenty days before the time specified for the hearing on the complaint. Service of the notice of hearing may be waived in writing by the respondent, or the parties may agree on a definite time and place for hearing with the consent of the agency having jurisdiction.

   d. A complaint may be served less than forty-five days before the time specified for a hearing on the complaint and a notice for hearing on a complaint may be served less than ~~forty-five~~ twenty days before the

time specified for hearing if otherwise authorized by statute. However, no administrative hearing regarding the renewal, suspension, or revocation of a license may be held fewer than ten days after the licensee has been served, personally or by certified mail, with a copy of a notice for hearing along with an affidavit, complaint, specification of issues, or other document alleging violations upon which the license hearing is based.

~~c.~~ e. ~~The notice for hearing shall state the time and place for the hearing on the complaint. The notice for hearing~~ A complaint may inform the respondent that an answer to the complaint must be served upon the complainant and the agency ~~giving the notice~~ with which the complaint is filed within twenty days after service of the complaint ~~and notice for hearing~~, or the agency may deem the complaint to be admitted. If the respondent fails to answer as requested within twenty days after service of the complaint ~~and notice for hearing~~, the agency may enter an order in default as the facts and law may warrant.

f. Service by certified mail is complete as of the date of certification.

g. ~~If a~~ A respondent ~~is~~ may be given less than ~~forty-five days' notice before a hearing pursuant to another statute, the notice may allow less than~~ twenty days to answer the complaint, pursuant to another statute, but no respondent may be required to answer a complaint in less than five days and an answer must be served on the complainant and the agency ~~giving the notice~~ with which the complaint is filed at least two days before the hearing on the complaint.

~~d.~~ h. In an emergency, in a contested case, the agency, in its discretion, may serve a complaint fewer than forty-five days before the hearing and notice ~~a contested case~~ the hearing on ~~a~~ the complaint by giving less than ~~forty-five~~ twenty days' notice. ~~Every~~ But, every party to an emergency proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.

3. a. If the administrative action does not involve a complaint and a specific-named respondent ~~or is not a contested case~~, the provisions of subsection 1 of this section do not apply.

b. An administrative agency may adopt rules establishing practices or procedures for proceedings which do not involve a complaint and a specific-named respondent ~~or which are not contested cases~~, including agency hearings on applications seeking some right, privilege, or authorization from an agency, or appeals to the agency of some other agency action. All ~~noncontested case proceedings or~~ proceedings which do not involve a complaint and a specific-named respondent must comply with another statute or rules of practice or procedure adopted pursuant to statute by an administrative agency. Notice pursuant to a rule must provide for at least ~~fifteen~~ twenty days' notice before the hearing except in cases of emergency or when a shorter notice period is necessary to comply with the requirements of federal statutes, rules, or standards.

SECTION 3. AMENDMENT. Subsection 1 of section 28-32-14 of the North Dakota Century Code is amended and reenacted as follows:

1. Any party before an administrative agency who is aggrieved by the final order of the agency, within fifteen days after notice has been given as required by section 28-32-13, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking ~~administrative or~~ judicial review.

SECTION 4. AMENDMENT. Subsection 6 of section 28-32-15 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~An~~ A bond or other undertaking for costs on appeal must be ~~executed~~ filed by the appellant~~, with sufficient surety to be approved by the judge of the district court, upon conditions requiring the appellant to prosecute the appeal without delay and to pay all costs adjudged against the appellant in the district court~~ as is required by appellants for costs on appeal in civil cases under the rules of appellate procedure. The bond or other undertaking must be filed with the clerk of the district court with the notice of appeal, must be made to the state of North Dakota, and may be enforced by the agency concerned for and on behalf of the state as obligee. A bond or other undertaking is not required when filing fees have been waived by a district court pursuant to section 27-01-07 or when the costs of preparation and filing of the record of administrative agency proceedings have been waived by a district court pursuant to subsection 3 of section 28-32-17.

SECTION 5. AMENDMENT. Subsections 2, 4, and 6 of section 28-32-17 of the North Dakota Century Code are amended and reenacted as follows:

2. Within thirty days, or a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, and after payment by the appellant of the estimated cost of preparation and filing of the entire record of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-15, the administrative agency shall notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the ~~general~~ insurance recovery fund and is hereby appropriated as a refund to the agency for the purposes of defraying the costs of preparing and filing the record. An agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.

4. The agency record of the proceedings, as applicable, must consist of only the following:

   a. The complaint, answer, and other initial pleadings or documents.

   b. Notices of all proceedings.

   c. Any prehearing notices, transcripts, documents, or orders.

   d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.

   e. A statement of matters officially noticed.

   f. Offers of proof and objections and rulings thereon.

   g. Proposed findings, requested orders, and exceptions.

   h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.

   i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on ~~consideration~~ reconsideration.

   j. Any information considered pursuant to section 28-32-07.

   k. Matters placed on the record after an ex parte communication.

   ~~l. Any other document that the agency believes is relevant to the appeal.~~

   ~~m. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.~~

6. The record on review of agency rulemaking action, as applicable, must consist of only the following:

   a. All agency notices concerning proposed rulemaking.

   b. A copy of the proposed rule upon which written and oral submissions were made.

   c. A copy of the rule as submitted for publication.

   d. Any opinion letters by the attorney general as to a rule's legality or the legality of the agency's rulemaking action.

   e. A copy of any interim rule and the agency's findings and statement of the reasons for an interim rule.

   f. The regulatory analysis of a proposed rule.

   g. The transcript of any oral hearing on a proposed rule.

h. All written submissions made to the agency on a proposed rule.

i. Any staff memoranda or data prepared for agency consideration in regard to the proposed rule.

j. Any other document that the agency believes is relevant to the appeal.

k. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 330

HOUSE BILL NO. 1356
(Representatives Tollefson, Hanson, Soukup)
(Senators Dotzenrod, Keller, Tennefos)

ADMINISTRATIVE RULEMAKING PROCEDURES

AN ACT to amend and reenact sections 28-32-02, 28-32-02.2, subsection 5 of section 28-32-03, and section 28-32-21.1 of the North Dakota Century Code, relating to administrative agency rulemaking procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-02 of the North Dakota Century Code is amended and reenacted as follows:

28-32-02. Rulemaking power of agency - Adoption deadlines - Hearing notice - Emergencies - Attorney general's opinion.

1. Every administrative agency ~~is authorized to~~ may adopt, and from time to time to amend or repeal, reasonable rules in conformity with the provisions of any statute administered or enforced by the agency.

2. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

3. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent, provide a phone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive

rule, provide the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the ~~first~~ second publication of the notice or the date the legislative council mails copies of an agency's notice and the ~~end of the period in which written or oral data, views, or arguments concerning the proposed rules will be received. If no request has been made to the legislative council for copies of the notices, the~~ date of the hearing. The thirty-day period begins on the ~~fifth~~ first business day of the month in which the notices ~~would have been~~ must be mailed ~~if a request had been made~~ or on the date of the second publication, whichever is later. ~~If a request has been made to the legislative council for copies of the notices~~ Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on ~~or before the fifth~~ the first business day of ~~each~~ the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than thirty days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

5. The legislative council shall establish a procedure whereby any person may request and receive mailed copies of all filings made by agencies pursuant to subsection 4. The legislative council may charge for providing copies of the filings.

6. If the agency finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare, or because a delay in rulemaking is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by subsection 4. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule. The agency's finding, and a brief statement of the reasons therefor, must be filed with the office of the legislative council, along with any final rule adopted. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

7. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when ~~the rule~~

~~merely repeats or paraphrases the text of the statute purported to be implemented by the rule. The attorney general may not approve any rule as to legality where~~ the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable, or when the procedural requirements for adoption of the rule in this chapter are not met. The attorney general ~~may suggest~~ shall advise an agency of any revision or rewording of a rule necessary to ~~meet~~ correct objections as to legality.

SECTION 2. AMENDMENT. Section 28-32-02.2 of the North Dakota Century Code is amended and reenacted as follows:

28-32-02.2. Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if~~, within:~~

   a. Within twenty days after the last published notice date of a proposed rule ~~adoption~~ hearing, a written request for the analysis is filed by the governor or ~~an agency. The agency proposing the rule shall issue a regulatory analysis if the~~ a member of the legislative assembly; or

   b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-02.

2. The regulatory analysis must contain:

   a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

   b. A description of the probable impact, including economic impact, of the proposed rule;

   c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

   d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

3. Each regulatory analysis must include quantification of the data to the extent practicable.

4. The agency shall ~~make~~ mail or deliver a copy of the regulatory analysis ~~available~~ to any ~~interested~~ person who requests ~~an opportunity to review~~ a copy of the regulatory analysis. The agency may charge for the actual cost of providing copies of the regulatory analysis.

5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. ~~A writ of mandamus may issue under the terms and conditions provided for in chapter 32-34 upon the application of a party beneficially interested~~

~~and aggrieved by an agency's failure to prepare and issue a required regulatory analysis.~~ Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

SECTION 3. AMENDMENT. Subsection 5 of section 28-32-03 of the North Dakota Century Code is amended and reenacted as follows:

5. A rule is invalid unless adopted in substantial compliance with ~~section 28-32-02~~ this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-15, an action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule.

SECTION 4. AMENDMENT. Section 28-32-21.1 of the North Dakota Century Code is amended and reenacted as follows:

28-32-21.1. Actions against administrative agencies - Attorneys' fees and costs.

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or an agent of an administrative agency, the court must award the party not an administrative agency reasonable attorneys' fees and costs if the court finds in favor of that party and, in the case of a final agency order, determines that the administrative agency acted without substantial justification.

2. This section applies to an administrative or civil judicial proceeding brought by a party not an administrative agency against an administrative agency for judicial review of a final agency order, or for judicial review pursuant to this chapter of the legality of agency rulemaking action or a rule adopted by an agency as a result of the rulemaking action being appealed.

3. Any attorneys' fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, rulemaking action, or rule of which was reviewed by the court. The court may withhold all or part of the attorneys' fees from any award if the court finds the administrative agency's action, in the case of a final agency order, was substantially justified or that special circumstances exist which make the award of all or a portion of the attorneys' fees unjust.

4. Nothing in this section shall be construed to alter the rights of a party to collect any fees under other applicable law.

Approved 1, 1993
Filed April 2, 1993

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 331

HOUSE BILL NO. 1349
(Representatives Boucher, Kaldor, Wilkie)
(Senators Evanson, Jerome)

MINOR SEX ABUSE PROSECUTION LIMIT

AN ACT to amend and reenact section 29-04-03.1 of the North Dakota Century Code, relating to the limitation of time within which a prosecution for a sexual abuse crime involving a minor victim must be commenced.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

29-04-03.1. Prosecution for sexual abuse of minors ~~to be commenced within seven years~~. A prosecution for violation of sections 12.1-20-03 through 12.1-20-08 or of section 12.1-20-11, where the victim was under eighteen years of age at the time the offense was committed must be commenced in the proper court within seven years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 332

SENATE BILL NO. 2284
(Senator Evanson)
(Representative Rydell)

FBI AGENT ARRESTS

AN ACT to authorize special agents of the federal bureau of investigation to make arrests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Federal bureau of investigation - Authority to make arrests.

1. "Special agent" means an employee of the federal bureau of investigation who is authorized to arrest, with or without a warrant, any individual for a violation of the United States Code and carry a firearm in the performance of the employee's duties as a federal law enforcement officer.

2. A special agent has the same authority and immunity as a peace officer in this state when making an arrest for a nonfederal crime if any of the following exist:

   a. The special agent has reasonable grounds to believe that a felony offense was committed and the person arrested committed the offense.

   b. The special agent is rendering assistance to a peace officer in an emergency or at the request of the peace officer.

   c. The special agent is working as a part of a task force composed of North Dakota peace officers and federal law enforcement officers.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 333

SENATE BILL NO. 2355
(Senator W. Stenehjem)
(Representative Kretschmar)

JUROR QUALIFICATIONS

AN ACT to amend and reenact section 29-17-34 of the North Dakota Century Code, relating to qualifications of jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-17-34 of the North Dakota Century Code is amended and reenacted as follows:

29-17-34. General causes of challenge specified. General causes of challenges are:

1. ~~A conviction for felony;~~

~~2.~~ A want of any of the qualifications prescribed by law to render a person a competent juror, including a want of knowledge of the English language as used in the courts; and

~~3.~~ 2. Unsoundness of mind or such defect in the faculties of the mind or organs of the body as renders ~~him~~ the juror incapable of performing the duties of a juror.

Approved March 25, 1993
Filed March 26, 1993

UNIFORM PROBATE CODE

CHAPTER 334

HOUSE BILL NO. 1111
(Judiciary Committee)
(At the request of the Commission on Uniform Laws)

UNIFORM PROBATE CODE CHANGES

AN ACT to create and enact chapters 30.1-05, 30.1-06, a new section to chapter 30.1-07, chapters 30.1-09.1, and 30.1-10 of the North Dakota Century Code, relating to the provisions of the Uniform Probate Code Article II - Intestacy, Wills, and Donative Transfers (1990) which pertain to the elective share of a surviving spouse, a spouse and children unprovided for in a will, applicable law at the time of death, rules of construction applicable to donative dispositions, and general provisions concerning probate and nonprobate transfers; to amend and reenact sections 30.1-01-04, 30.1-01-06, 30.1-04-01, 30.1-04-02, 30.1-04-03, 30.1-04-03.1, 30.1-04-04, 30.1-04-06, 30.1-04-08, 30.1-04-09, 30.1-04-10, 30.1-04-11, 30.1-04-12, 30.1-04-13, 30.1-07-01, 30.1-07-02, 30.1-07-03, 30.1-08-02, 30.1-08-04, 30.1-08-06, 30.1-08-07, 30.1-08-08, 30.1-08-09, 30.1-08-11, 30.1-08-13, 30.1-09-03, 30.1-09-04, 30.1-09-05, 30.1-09-06, 30.1-09-07, 30.1-09-08, 30.1-09-09, 30.1-09-10, 30.1-09-12, 30.1-09-13, 30.1-11-01, 30.1-11-02, 30.1-14-03, 30.1-14-08, 30.1-20-05, subsection 2 of section 30.1-29-07, subsection 1 of section 30.1-31-09, subsection 2 of section 30.1-31-12, and subsection 1 of section 47-24.1-18 of the North Dakota Century Code, relating to the provisions of the Uniform Probate Code Article II which pertain to evidence of death, definitions, intestate succession, exempt property and allowances, wills, will contracts, custody and deposit of wills, rules of construction applicable only to wills, the Uniform Probate Code Article VI - Nonprobate Transfers on Death (1989), and general probate provisions; to repeal present chapters 30.1-05, 30.1-06, sections 30.1-08-03, 30.1-09-01, 30.1-09-02, 30.1-09-11, chapters 30.1-10, 31-12, and 47-11.1 of the North Dakota Century Code, relating to the elective share of the surviving spouse, spouse and children unprovided for in wills, holographic wills, rules of construction, general provisions, Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act, and the Uniform Simultaneous Death Act; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-01-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-01-04. (1-107) Evidence ~~as to~~ of death or status. In ~~proceedings under this title,~~ addition to the rules of evidence in courts of general jurisdiction, ~~including any relating to simultaneous deaths, are applicable unless specifically displaced by this title. In addition,~~ the following rules relating to a determination of death and status ~~are applicable~~ apply:

1. Death occurs when an individual is determined to be dead under chapter 23-06.3.

2. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie ~~proof~~ evidence of the fact, place, date, and time of death, and the identity of the decedent.

~~2.~~ 3. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that ~~a person~~ an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

~~3.~~ 4. In the absence of prima facie evidence of death under subsection ~~1~~ 2 or ~~2~~ 3, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

~~4.~~ 5. ~~A person~~ An individual whose death is not ~~otherwise~~ established under this section, who is absent for a continuous period of ~~seven~~ five years, during which ~~time~~ the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

6. In the absence of evidence disputing the time of death stated on a document described in subsection 2 or 3, a document described in subsection 2 or 3 that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

SECTION 2. AMENDMENT. Section 30.1-01-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-01-06. (1-201) General definitions. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters, and unless the context otherwise requires, in this title:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

2. "Application" means a written request to the court for an order of informal probate or appointment under chapter 30.1-14.

~~2.~~ 3. "Augmented estate" means the estate described in section 30.1-05-02.

~~3.~~ 4. "Beneficiary", as it relates to a trust ~~beneficiaries~~ beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer~~, and~~; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with a payable on death designation, of a

security registered in beneficiary form transferable on death, or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

5. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance annuity policy, of an account with payable on death designation, of a security registered in beneficiary form transferable on death, or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

~~4.~~ 6. "Child" includes ~~any~~ an individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes ~~any~~ a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

~~5.~~ 7. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands~~,~~ or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

~~6. "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the county court.~~

~~7.~~ 8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person, and includes limited conservators as defined in this section.

9. "Court" means the court having jurisdiction in matters relating to the affairs of decedents.

10. "Descendant" of an individual means all descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

~~8.~~ 11. "Devise", when used as a noun, means a testamentary disposition of real or personal property, and when used as a verb, means to dispose of real or personal property by will.

~~9.~~ 12. "Devisee" means ~~any~~ a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

~~10.~~ 13. "Disability" means cause for a protective order as described ~~by~~ in section 30.1-29-01.

~~11.~~ 14. "Distributee" means any person who has received property of a decedent from ~~his~~ the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in ~~his~~ the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will to the extent of the devised assets.

~~12.~~ 15. "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

~~13.~~ 16. "Exempt property" means that property of a decedent's estate which is described in section 30.1-07-01.

~~14.~~ 17. "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

~~15.~~ 18. "Foreign personal representative" means a personal representative ~~of~~ appointed by another jurisdiction.

~~16.~~ 19. "Formal proceedings" means ~~those~~ proceedings conducted before a judge with notice to interested persons.

20. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with payable on death designation, security registered in beneficiary form transferable on death, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

~~17.~~ 21. "Guardian" means a person who or nonprofit corporation that has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, and includes limited guardians as defined in this section, but excludes one who is merely a guardian ad litem.

~~18.~~ 22. "Heirs", except as controlled by section 30.1-09.1-11, means ~~those~~ persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

~~19.~~ 23. "Incapacitated person" ~~is as defined~~ means an individual described in section 30.1-26-01.

~~20.~~ 24. "Informal proceedings" means those conducted by the court for probate of a will or appointment of a personal representative without notice to interested persons.

~~21.~~ 25. "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person ~~which may be affected by the proceeding. It~~. The term also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons.

The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~22.~~ 26. "Issue" of a person means ~~all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this title~~ descendant as defined in subsection 10.

27. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~23.~~ 28. "Lease" includes an oil, gas, or other mineral lease.

~~24.~~ 29. "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~25.~~ 30. "Limited conservator" means a person or nonprofit corporation, appointed by the court, to manage only those financial resources specifically enumerated by the court for the person with limited capacity, and includes limited conservators as described by section 30.1-29-20.

~~26.~~ 31. "Limited guardian" means a person or nonprofit corporation, appointed by the court, to supervise certain specified aspects of the care of a person with limited capacity, and includes limited guardians as described by section 30.1-28-04.

~~27.~~ 32. "Minor" means a person who is under eighteen years of age.

~~28.~~ 33. "Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.

~~29.~~ 34. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of ~~his~~ death.

~~30.~~ 35. "Organization" ~~includes~~ means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership ~~or~~, joint venture, association, ~~two or more persons having a joint or common interest,~~ or any other legal or commercial entity.

~~31.~~ 36. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

37. "Payer" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

~~32.~~ 38. "Person" means an individual, a corporation, an organization, or other legal entity.

~~33.~~ 39. "Person with limited capacity" is as defined in section 30.1-26-01.

~~34.~~ 40. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

~~35.~~ 41. "Petition" means a written request to the court for an order after notice.

~~36.~~ 42. "Proceeding" includes ~~an~~ action at law~~,~~ and ~~a~~ suit in equity ~~in a district court or an exercise by the court of equitable powers or an application of equitable principles~~.

~~37.~~ 43. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

~~38.~~ 44. "Protected person" is as defined in section 30.1-26-01.

~~39.~~ 45. "Protective proceeding" ~~is as defined~~ means a proceeding described in section 30.1-26-01.

~~40.~~ 46. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

~~41.~~ 47. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

~~42.~~ 48. "Special administrator" means a personal representative as described by sections 30.1-17-14 through 30.1-17-18.

~~43.~~ 49. "State" ~~includes any~~ means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, ~~and~~ or any territory or insular possession subject to the ~~legislative authority~~ jurisdiction of the United States.

~~44.~~ 50. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~45.~~ 51. "Successors" means ~~those~~ persons, other than creditors, who are entitled to property of a decedent under ~~his~~ the decedent's will or this title.

~~46.~~ 52. "Supervised administration" refers to the proceedings described in chapter 30.1-16.

53. "Survive", except for purposes of sections 30.1-31-21 through 30.1-31-30, means that an individual has neither predeceased an event, including the death of another individual, nor predeceased an event under sections

30.1-04-04 and 30.1-09.1-02. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~47.~~ 54. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~48.~~ 55. "Trust" includes ~~any~~ an express trust, private or charitable, with additions thereto, wherever and however created. ~~It~~ The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. ~~"Trust"~~ The term excludes other constructive trusts~~,~~ and ~~it~~ excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

~~49.~~ 56. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~50.~~ 57. "Ward" ~~is as defined~~ means an individual described in section 30.1-26-01.

~~51.~~ 58. "Will" includes codicil and any testamentary instrument ~~which~~ that merely appoints an executor ~~or~~, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

SECTION 3. AMENDMENT. Section 30.1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-01. (2-101) Intestate estate.

1. Any part of ~~the~~ a decedent's estate ~~of a decedent~~ not effectively disposed of by ~~his~~ will passes by intestate succession to ~~his~~ the decedent's heirs as prescribed in ~~the following sections of~~ this title, except as modified by the decedent's will.

2. A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

SECTION 4. AMENDMENT. Section 30.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-02. (2-102) Share of ~~the~~ spouse. The intestate share of ~~the~~ a decedent's surviving spouse is:

1. ~~If there is no surviving issue or parent of the decedent, the~~ The entire intestate estate if:

   a. No descendant or parent of the decedent survives the decedent; or

   b. All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent.

2. ~~If there is no surviving issue but the decedent is survived by a parent or parents, the~~ The first ~~fifty~~ two hundred thousand dollars, plus ~~one-half~~ three-fourths of ~~the~~ any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.

3. ~~If there are surviving issue all of whom are issue of the surviving spouse also, the~~ The first one hundred fifty thousand dollars, plus one-half of any balance of the intestate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent.

4. The first ~~fifty~~ one hundred thousand dollars, plus one-half of ~~the~~ any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

~~4. If there are surviving issue, one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.~~

SECTION 5. AMENDMENT. Section 30.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-03. (2-103) Share of heirs other than surviving spouse. ~~The~~ Any part of the intestate estate not passing to the decedent's surviving spouse under section 30.1-04-02, or the entire intestate estate if there is no surviving spouse, passes ~~as follows~~ in the following order to the individuals designated below who survive the decedent:

1. To the ~~issue of the decedent. If they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take~~ decedent's descendants by representation.

2. If there is no surviving ~~issue~~ descendant, to ~~his parent or~~ the decedent's parents equally if both survive, or to the surviving parent.

3. If there is no surviving ~~issue~~ descendant or parent, to the ~~issue~~ descendants of the decedent's parents or either of them by representation.

4. If there is no surviving ~~issue~~ descendant, parent, or ~~issue~~ descendant of a parent, but the decedent is survived by one or more grandparents or ~~issue~~ descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the ~~issue~~ descendants of the decedent's paternal grandparents or either of them if both are deceased,

the descendant's taking by representation; and the other half passes to the decedent's maternal relatives in the same manner. ~~If~~; but if there ~~be~~ is no surviving grandparent or ~~issue~~ descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

SECTION 6. AMENDMENT. Section 30.1-04-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-04-03.1. ~~Persons~~ Individuals related to decedent through two lines. ~~A person~~ An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle ~~him~~ the individual to the larger share.

SECTION 7. AMENDMENT. Section 30.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-04. (2-104) Requirement that heir survive decedent for one hundred twenty hours. ~~Any person~~ An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If ~~the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and~~ it ~~cannot be~~ is not established by clear and convincing evidence that ~~the person~~ an individual who would otherwise be an heir ~~has~~ survived the decedent by one hundred twenty hours, it is deemed that the ~~person~~ individual failed to survive for the required period. This section is not to be applied ~~where~~ if its application would result in a taking of intestate estate by the state under section 30.1-04-05.

SECTION 8. AMENDMENT. Section 30.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-06. (2-106) Representation.

1. In this section:

   a. "Deceased descendant", "deceased parents", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section 30.1-04-04.

   b. "Surviving descendant' means a decedent who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 30.1-04-04.

2. If ~~representation is called for by this title~~, under subsection 1 of section 30.1-04-03, a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are surviving ~~heirs~~ descendants in the ~~nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner~~ generation nearest to the decedent which contains one or more surviving

descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

3. If under subsection 3 or 4 of section 30.1-04-03 a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

SECTION 9. AMENDMENT. Section 30.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-08. (2-108) Afterborn heirs. ~~Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.~~ An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

SECTION 10. AMENDMENT. Section 30.1-04-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-04-09. ~~**(2-109)**~~ (2-114) **Meaning of child and related terms.** If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted ~~person~~ individual is the child of an adopting parent or parents and not of the natural parents, ~~except that~~ but adoption of a child by the spouse of ~~a~~ either natural parent has no effect on the relationship between the child and ~~either~~ that natural parent or the right of the child or a descendant of the child to inherit from or through the other natural parent.

2. Inheritance from and through a child by either natural parent or kindred is precluded unless that natural parent has openly treated the child as the parent's, and has not refused to support the child.

3. In cases not covered by ~~subsection~~ subsections 1 and 2, ~~a person~~ an individual is the child of its natural parents regardless of the marital status of its parents ~~and the~~. The parent and child relationship may be established under ~~the Uniform Parentage Act~~ chapter 14-17.

SECTION 11. AMENDMENT. Section 30.1-04-10 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-10. ~~(2-110)~~ (2-109) Advancements.

1. If ~~a person~~ an individual dies intestate as to all ~~his~~ or a portion of the individual's estate, property ~~which he~~ the decedent gave ~~in his~~ during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the ~~latter's~~ heir's intestate share ~~of the estate~~ only if the decedent declared in a contemporaneous writing ~~by the decedent~~ or the heir acknowledged in writing ~~by the heir to be~~ that the gift is an advancement or the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

2. For ~~this purpose the~~ purposes of subsection 1, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death ~~of the decedent~~, whichever first occurs.

3. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the ~~intestate share to be received by the recipient's issue~~ division and distribution of the decedent's intestate estate, unless the ~~declaration or acknowledgment~~ decedent's contemporaneous writing provides otherwise.

SECTION 12. AMENDMENT. Section 30.1-04-11 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-11. ~~(2-111)~~ (2-110) Debts to decedent. A debt owed to ~~the~~ a decedent is not charged against the intestate share of any ~~person~~ individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's ~~issue~~ descendants.

SECTION 13. AMENDMENT. Section 30.1-04-12 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-12. ~~(2-112)~~ (2-111) Alienage. No ~~person~~ individual is disqualified to take as an heir because ~~he~~ the individual or ~~a person~~ an individual through whom ~~he~~ that individual claims is or has been an alien.

SECTION 14. AMENDMENT. Section 30.1-04-13 of the North Dakota Century Code is amended and reenacted as follows:

30.1-04-13. ~~(2-113)~~ (2-112) Dower and curtesy abolished. The estates of dower and curtesy are abolished.

SECTION 15. Chapter 30.1-05 of the North Dakota Century Code is created and enacted as follows:

30.1-05-01. (2-201) Elective share.

1. The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this chapter, to take an elective-share amount equal to the value of the

elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is: Supplemental amount only
Less than 1 year	3% of the augmented estate
1 year but less than 2 years	6% of the augmented estate
2 years but less than 3 years	9% of the augmented estate
3 years but less than 4 years	12% of the augmented estate
4 years but less than 5 years	15% of the augmented estate
5 years but less than 6 years	18% of the augmented estate
6 years but less than 7 years	21% of the augmented estate
7 years but less than 8 years	24% of the augmented estate
8 years but less than 9 years	27% of the augmented estate
9 years but less than 10 years	30% of the augmented estate
10 years but less than 11 years	34% of the augmented estate
11 years but less than 12 years	38% of the augmented estate
12 years but less than 13 years	42% of the augmented estate
13 years but less than 14 years	46% of the augmented estate
14 years but less than 15 years	50% of the augmented estate
15 years or more	

2. If the sum of the amounts described in subdivisions c and d of subsection 2 of section 30.1-05-02, subdivisions a and c of subsection 1 of section 30.1-05-07, and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under subsections 2 and 3 of section 30.1-05-07 is less than fifty thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to fifty thousand dollars minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in subsections 2 and 3 of section 30.1-05-07.

3. The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

30.1-05-02. (2-202) Augmented estate.

1. a. In this section:

(1) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. Any recorded instrument on which a state documentary fee is noted is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

(2) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of

appointment over property is deemed to have a beneficial interest in the property.

(3) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in the decedent or the decedent's creditors.

(4) "Probate estate" means property, whether movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(5) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(6) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

b. In paragraphs 3 and 4 of subdivision b of subsection 2, a "transfer" includes an exercise or release of a power of appointment, but does not include a lapse of a power of appointment.

2. The augmented estate consists of the sum of:

a. The value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance as defined in section 47-18-01, family allowances and exemptions, and enforceable claims.

b. The value of the decedent's reclaimable estate, which is composed of all property, whether movable or immovable, wherever situated, not including in the decedent's probate estate, of any of the following types:

(1) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.

(2) Property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person,

except the decedent's surviving spouse, with right of survivorship, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse.

(3) Proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy, had the power to change the beneficiary of the insurance policy, or the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the two-year period next preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse.

(4) Property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person, other than the decedent's surviving spouse, if the transfer is of any of the following types:

(a) Any transfer to the extent that the decedent retained at the time of or during the two-year period next preceding death the possession or enjoyment of, or right to income from, the property.

(b) Any transfer to the extent that, at the time of or during the two-year period next preceding the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent or the decedent's estate.

(c) Any transfer of property, to the extent the decedent's contribution to it, as a percentage of the whole, was made during the two-year period next preceding the decedent's death, by which the property is held, at the time of or during the two-year period preceding the decedent's death, by the decedent and another, other than the decedent's surviving spouse, with right of survivorship.

(d) Any transfer made to a donee during the two-year period next preceding the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed ten thousand dollars.

c. The value of property to which the surviving spouse succeeds by reason of the decedent's death (other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession), including the proceeds of insurance (including accidental

death benefits) on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system.

d. The value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includable in the surviving spouse's reclaimable estate had the spouse predeceased the decedent. But amounts that would have been includable in the surviving spouse's reclaimable estate under paragraph 3 of subdivision b of subsection 2 are not valued as if the spouse were deceased.

3. Any transfer or exercise or release of a power of appointment is excluded from the decedent's reclaimable estate to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise, or release or if irrevocably made with the written consent or joinder of the surviving spouse.

4. Property is valued as of the decedent's death, but property irrevocably transferred during the two-year period next preceding the decedent's death which is included in the decedent's reclaimable estate under paragraphs 1, 2, and 4 of subdivision b of subsection 2 is valued as of the time of the transfer. If the terms of more than one of the paragraphs or subparagraphs of subdivision b of subsection 2 apply, the property is included in the augmented estate under the paragraph or subparagraph that yields the highest value. For the purposes of this section, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.

5. a. Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payer or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payer or other third party is liable for payments made or other actions taken after the payer or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

b. The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payer's or other third-party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payer or other third party may pay any amount owed or transfer or deposit any item of

property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under subsection 4 of section 30.1-05-05, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection 1 of section 30.1-05-05, or, if filed, the demand for an elective share is withdrawn under subsection 3 of section 30.1-05-05, the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

c. Upon petition to the court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

6. a. A person who purchases property from a recipient for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of that payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in section 30.1-14-07.

b. If any section or part of any section of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or any other benefit, is obligated to return that payment, item of property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section 30.1-05-07, to the person who would have been entitled to it were that section or part of that section not preempted.

30.1-05-03. (2-203) Right of election personal to surviving spouse.

1. The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under subsection 1 of section 30.1-05-05. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

2. If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the

elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under subsections 2 and 3 of section 30.1-05-07 and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee must administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

a. Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse must qualify on the basis of need.

b. During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust, by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

c. Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order: under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or to that predeceased spouse's heirs under section 30.1-09.1-11.

30.1-05-04. (2-204) Waiver of right to elect and of other rights.

1. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

2. A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

   a. The waiver, if given effect, would reduce the assets or income available to the surviving spouse to an amount less than those allowed for persons eligible for a program of public assistance;

   b. The surviving spouse did not execute the waiver voluntarily; or

   c. The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

      (1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent.

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property of financial obligations of the decedent beyond the disclosure provided.

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

3. An issue of unconscionability of a waiver is for decision by the court as a matter of law.

4. Unless it provides to the contrary, a waiver of "all rights" or equivalent language in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the person from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

30.1-05-05. (2-205) Proceeding for elective share - Time limit.

1. Except as provided in subsection 2, the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection 2, the decedent's reclaimable estate, described in subdivision b of subsection 2 of section 30.1-05-02, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

2. Within nine months after the decedent's death, the surviving spouse may petition the court for an extention of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in subdivision b of subsection 2 of section 30.1-05-02, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

3. The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

4. After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section 30.1-05-07. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under section 30.1-05-07 had relief been secured against all persons subject to contribution.

5. An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

6. A copy of the order or judgment of the court shall be forwarded immediately to the tax commissioner by the court.

30.1-05-06. (2-206) Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

30.1-05-07. (2-207) Charging spouse with owned assets and gifts received - Liability of others for balance of elective share.

1. In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's reclaimable estate:

   a. Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession.

   b. Amounts included in the augmented estate under subdivision c of subsection 2 of section 30.1-05-02.

   c. Amounts included in the augmented estate which would have passed to the spouse but were disclaimed.

   d. Amounts included in the augmented estate under subdivision d of subsection 2 of section 30.1-05-02 up to the applicable percentage thereof. For the purposes of this subdivision, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in subsection 1 of section 30.1-05-01 appropriate to the length of time the spouse and the decedent were married to each other.

2. If, after the application of subsection 1, the elective-share amount is not fully satisfied or if the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate other

than amounts irrevocably transferred within two years before the decedent's death are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are so applied that liability for the unsatisfied balance of the elective share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

3. If, after the application of subsections 1 and 2, the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable estate is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

4. Only original recipients of the reclaimable estate described in subdivision b of subsection 2 of section 30.1-05-02, and the donees of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the reclaimable estate or to pay the value of the amount for which the person is liable.

SECTION 16. Chapter 30.1-06 of the North Dakota Century Code is created and enacted as follows:

30.1-06-01. (2-301) Entitlement of spouse - Premarital will.

1. If the testator's surviving spouse married the testator after the testator executed a will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised or passes under section 30.1-09-05 or 30.1-09-06 to a descendant of such a child, unless:

   a. It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

   b. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

   c. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

2. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other

devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 30.1-09-05 or 30.1-09-06 to a descendant of such a child, abate as provided in section 30.1-20-02.

30.1-06-02. (2-302) Omitted children.

1. Except as provided in subsection 2, if a testator fails to provide in the will for any of testator's children born or adopted after the execution of the will, the omitted afterborn or after-adopted child receives a share in the estate as follows:

   a. If the testator had no child living when the testator executed the will, an omitted afterborn or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

   b. If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted afterborn or after-adopted child is entitled to share in the testator's estate as follows:

      (1) The portion of the testator's estate in which the omitted afterborn or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

      (2) The omitted afterborn or after-adopted child is entitled to receive the share of the testator's estate, as limited in paragraph 1, that the child would have received had the testator included all omitted afterborn and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

      (3) To the extent feasible, the interest granted an omitted afterborn or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

      (4) In satisfying a share provided by this subdivision, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

2. Neither subdivision a nor subdivision b of subsection 1 applies if:

   a. It appears from the will that the omission was intentional; or

b. The testator provided for the omitted afterborn or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

3. Except as provided in subsection 1, if at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted afterborn, or after-adopted child.

4. In satisfying a share provided by subdivision a of subsection 1 or subsection 3, devises made by the will abate under section 30.1-20-02.

SECTION 17. A new section to chapter 30.1-07 of the North Dakota Century Code is created and enacted as follows:

(2-401) Applicable law. This chapter applies to the estate of a decedent who dies domiciled in this state. The rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

SECTION 18. AMENDMENT. Section 30.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-07-01. ~~(2-402)~~ (2-403) Exempt property ~~entitlement - Personal property~~. In addition to the homestead defined in section 47-18-01, the decedent's surviving spouse ~~of a decedent who was domiciled in this state~~ is entitled ~~to receive~~ from the estate~~,~~ to a value, not exceeding ~~five~~ ten thousand dollars in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's minor children ~~of~~, whom the decedent was obligated to support and children who were in fact being supported by the decedent, are entitled jointly to the same value. If encumbered chattels are selected and ~~if~~ the value in excess of security interests, plus that of other exempt property, is less than ~~five~~ ten thousand dollars, or if there is not ~~five~~ ten thousand dollars worth of exempt property in the estate, the spouse or such children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~five~~ ten thousand dollar value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, ~~except that~~ but the right to any assets to make up a deficiency of exempt property ~~shall abate~~ abates as necessary to permit ~~prior~~ earlier payment of the homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will ~~of the decedent~~, unless otherwise provided, by intestate succession, or by way of elective share.

SECTION 19. AMENDMENT. Section 30.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-07-02. ~~(2-403)~~ (2-404) Family allowance.

1. In addition to the right to homestead ~~rights~~ allowance and exempt property, ~~if~~ the ~~decedent was domiciled in this state, the~~ decedent's surviving spouse and minor children whom the decedent was obligated to

support and children who were in fact being supported by ~~him~~ the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the ~~minor and dependent~~ children, or persons having their care and custody. ~~In case any~~ If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or ~~his~~ the child's guardian or other person having ~~his~~ the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims~~, but not over~~ except the homestead allowance.

2. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession~~,~~ or by way of elective share. The death of any person entitled to family allowance terminates ~~his~~ the right to allowances not yet paid.

SECTION 20. AMENDMENT. Section 30.1-07-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-07-03. ~~(2-404)~~ (2-405) Source, determination, and documentation.

1. If the estate is otherwise sufficient, property specifically devised ~~is~~ may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, ~~the~~ guardians of ~~the~~ minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make ~~this selection~~ those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or ~~if~~ there ~~are~~ is no ~~guardians~~ guardian of ~~the~~ a minor ~~children~~ child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. ~~He~~ The personal representative may determine the family allowance in a lump sum not exceeding ~~six~~ eighteen thousand dollars or periodic installments not exceeding one thousand five hundred dollars per month for one year, and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which ~~relief~~ may ~~provide~~ include a family allowance ~~larger or smaller~~ other than that which the personal representative determined or could have determined.

2. If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under subsection 2 of section 30.1-05-03.

SECTION 21. AMENDMENT. Section 30.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-02. (2-502) Execution - Witnessed wills - Holographic wills.

1. Except as provided ~~for holographic wills, writings within section 30.1-08-13, and wills within section~~ in subsection 2 and in sections 30.1-08-06~~, every~~ and 30.1-08-13, a will ~~shall~~ must be ~~in~~:

   a. In writing ~~signed~~.

   b. Signed by the testator or in the testator's name by some other ~~person~~ individual in the testator's conscious presence and by ~~his~~ the testator's direction~~, and shall be signed~~.

   c. Signed by at least two ~~persons~~ individuals, each of whom ~~witnessed~~ signed within a reasonable time after witnessing either the signing of the will as described in subdivision b or the testator's acknowledgment of ~~the~~ that signature or acknowledgment of the will.

2. A will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

3. Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

SECTION 22. AMENDMENT. Section 30.1-08-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-08-04. (2-504) Self-proved will.

1. ~~Any~~ A will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

   THE STATE OF _____
   COUNTY OF _____

   I, _____, the testator, sign my name to this instrument this _____ day of _____, _____, and being first sworn, declare to the undersigned authority that I sign and execute this instrument as my ~~last~~ will~~,~~ and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

   _____
   Testator

   We, _____, _____, the witnesses, sign our names to this instrument, and being first sworn, declare to the undersigned authority that the testator ~~signed~~ signs and ~~executed~~

executes this instrument as ~~his last~~ the testator's will~~,~~ and that ~~he signed~~ the testator signs it willingly or willingly ~~directed~~ directs another to sign for ~~him~~ the testator, and that each of us, in the presence and hearing of the testator, signs this will as ~~a~~ witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, ~~witnesses~~ witness, this _____ day of _____.

(SEAL) (Signed)_____

_____
(Official capacity of officer)

2. An attested will may at any time after its execution be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as ~~his last~~ the testator's will and that ~~he~~ the testator had signed willingly or willingly directed another to sign for ~~him~~ the testator, and that ~~he~~ the testator executed it as ~~his~~ the testator's free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of our knowledge the testator was at that time eighteen or more years of age, of sound mind, and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, _____.

(SEAL) (Signed)_____

_____
(Official capacity of officer)

3. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

SECTION 23. AMENDMENT. Section 30.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-06. (2-506) Choice of law as to execution. A written will is valid if executed in compliance with section 30.1-08-02 ~~or 30.1-08-03~~ or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

SECTION 24. AMENDMENT. Section 30.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-07. (2-507) Revocation by writing or by act.

1. A will or any part thereof is revoked:

~~1.~~ a. By executing a subsequent will ~~which~~ that revokes the ~~prior~~ previous will or part expressly or by inconsistency; or

~~2.~~ b. By ~~being burned, torn, canceled, obliterated, or destroyed,~~ performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking ~~it by the testator or by another person~~ the will or part or if another individual performed the act in ~~his~~ the testator's conscious presence and by ~~his~~ the testator's direction. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will", whether or not the burn, tear, or cancellation touched any of the words on the will.

2. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

3. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

4. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

SECTION 25. AMENDMENT. Section 30.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-08. (2-508) Revocation by ~~divorce - No revocation by other changes~~ change of circumstances. ~~If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 30.1-10-02. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.~~ Except as provided in sections 30.1-10-03 and 30.1-10-04, a change of circumstances does not revoke a will or any part of it.

SECTION 26. AMENDMENT. Section 30.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-09. (2-509) Revival of revoked will.

1. If a subsequent will ~~which, had it remained effective at death, would have~~ that wholly revoked a ~~prior~~ previous will ~~in whole or in part,~~ is thereafter revoked by ~~acts~~ a revocatory act under subdivision b of subsection 1 of section 30.1-08-07, the ~~prior~~ previous will ~~is~~ remains revoked ~~in whole or in part~~ unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that ~~he~~ the testator intended the ~~prior~~ previous will to take effect as executed.

2. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under subdivision b of subsection 1 of section 30.1-08-07, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

3. If a subsequent will ~~which, had it remained effective at death, would have~~ that revoked a ~~prior~~ previous will in whole or in part~~,~~ is thereafter revoked by ~~a subsequent~~ another, later, will, the ~~prior~~ previous will ~~is~~ remains revoked in whole or in part, ~~except~~ unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the ~~subsequent~~ later will that the testator intended the ~~prior~~ previous will to take effect.

SECTION 27. AMENDMENT. Section 30.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-11. (2-511) Testamentary additions to trusts.

1. A ~~devise or bequest, the validity of which is determinable by the law of this state, may be made by a~~ will may validly devise property to the trustee of a trust established or to be established during the testator's lifetime by the testator ~~or~~, by the testator and some other person, or by some other person~~,~~ including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, or at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, or concurrently with, or after the execution of the testator's will or in ~~the valid last~~ another individual's will ~~of a person who~~ if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or ~~after~~ the testator's death ~~of the testator~~.

2. Unless the testator's will provides otherwise, ~~the~~ property ~~so~~ devised to a trust described in subsection 1:

~~1.~~ a. Is not ~~deemed to be~~ held under a testamentary trust of the testator but becomes a part of the trust to which it is ~~given~~ devised.

~~2.~~ b. ~~Shall~~ Must be administered and disposed of in accordance with the provisions of the governing instrument ~~or will~~ setting forth the terms of the trust, including any amendments thereto made before or after the testator's death ~~of the testator, regardless of whether made before or after the execution of the testator's will, and, if the testator's will so provides, including any amendments to the trust made after the death of the testator~~.

3. ~~A~~ Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death ~~of the testator~~ causes the devise to lapse.

SECTION 28. AMENDMENT. Section 30.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

30.1-08-13. (2-513) Separate writing identifying ~~bequest~~ devise of certain types of tangible personal property. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money~~, evidences of indebtedness, documents of title, and securities, and property used in trade or business~~. To be admissible under this section as evidence of the intended disposition, the writing must ~~either be in the handwriting of the testator or~~ be signed by ~~him~~ the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing ~~which~~ that has no significance apart from its effect ~~upon~~ on the dispositions made by the will.

SECTION 29. AMENDMENT. Section 30.1-09-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-09-03. ~~(2-603)~~ (2-601) Rules of construction and intention applicable only to wills. The intention of a testator as expressed in ~~his~~ the testator's will controls the legal effect of ~~his~~ the testator's dispositions. The rules of construction expressed in ~~the succeeding sections of~~ this chapter apply unless a contrary intention is indicated by the will.

SECTION 30. AMENDMENT. Section 30.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-04. ~~(2-604)~~ (2-602) ~~Construction that will~~ Will passes all property - After-acquired property. A will ~~is construed to pass~~ may provide for the passage of all property ~~which~~ the testator owns at ~~his~~ death ~~including~~ and all property acquired by the estate after the ~~execution of the will~~ testator's death.

SECTION 31. AMENDMENT. Section 30.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-05. ~~(2-605)~~ (2-603) Antilapse - Deceased devisee - Class gifts. ~~If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.~~

1. In this section:

   a. "Alternative devise" means that a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

   b. "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

   c. "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

   d. "Devisee" includes a class member if the devise is in the form of a class gift, an individual or class member who was deceased at the time the testator executed the will as well as an individual or class member who was then living but who failed to survive the testator, and

an appointee under a power of appointment exercised by the testator's will.

e. "Stepchild" is a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator.

f. "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 30.1-09.1-02.

g. "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

2. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

a. Except as provided in subdivision d, if a devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

b. Except as provided in subdivision d, if a devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which that deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this subdivision, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

c. For purposes of section 30.1-09-03, words of survivorship, such as in a devise to an individual "if the individual survives me", or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

d. If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

e. Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

3. If under subsection 2, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

a. Except as provided in subdivision b, the devised property passes under the primary substitute gift.

b. If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

c. In this subsection:

(1) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(2) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(3) "Younger-generation devise" means a devise that is to a descendant of a devisee of the primary devise, is an alternative devise with respect to the primary devise, is a devise for which a substitute gift is created, and would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise.

SECTION 32. AMENDMENT. Section 30.1-09-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-06. ~~(2-606)~~ (2-604) Failure of testamentary provision.

1. Except as provided in section 30.1-09-05, ~~if~~ a devise, other than a residuary devise, that fails for any reason~~, it~~ becomes a part of the residue.

2. Except as provided in section 30.1-09-05, if the residue is devised to two or more persons ~~and~~, the share ~~of one~~ of ~~the~~ a residuary ~~devisees~~ devisee that fails for any reason~~, his share~~ passes to the other residuary devisee, or to other residuary devisees in proportion to ~~their~~ the interests of each in the remaining part of the residue.

SECTION 33. AMENDMENT. Section 30.1-09-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-09-07. ~~(2-607)~~ (2-605) ~~Change~~ Increase in securities - Accessions - ~~Nonademption~~.

1. If ~~the~~ a testator ~~intended a specific devise of certain~~ executes a will that devises securities ~~rather than the equivalent value thereof, the specific devisee is entitled only to~~ and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

   a. ~~As much of the devised securities as is a part of the estate at the time of the testator's death.~~ Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.

   b. ~~Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.~~ Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

   c. ~~Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.~~ Securities of the same organization acquired as a result of a plan of reinvestment.

   ~~d. Any additional securities of the entity owned by the testator as a result of a plan of reinvestment.~~

2. Distributions in cash before death with respect to a ~~specifically devised~~ described security ~~not provided for in subsection 1~~ are not part of the ~~specific~~ devise.

SECTION 34. AMENDMENT. Section 30.1-09-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-09-08. ~~(2-608)~~ (2-606) Nonademption of specific devises ~~in certain cases~~ - Unpaid proceeds of sale, condemnation, or insurance - Sale by conservator or agent.

1. A specific devisee has the right to the ~~remaining~~ specifically devised property in the testator's estate at death and:

   a. Any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property.

   b. Any amount of a condemnation award for the taking of the property unpaid at death.

   c. Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property.

d. ~~Any property~~ Property owned by the testator at ~~his~~ death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

e. Real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property.

2. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for ~~a~~ an incapacitated principal ~~who is under a disability~~, or if a condemnation award ~~or~~, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for ~~a~~ an incapacitated principal ~~who is under a disability as a result of condemnation, fire, or casualty~~, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, ~~or~~ the insurance proceeds, or the recovery. ~~This subsection does not apply if, after the sale, condemnation, fire, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year.~~

3. The right of ~~the~~ a specific devisee under ~~this~~ subsection 2 is reduced by any right the devisee has under subsection 1.

4. For the purposes of the references in subsection 2 to a conservator, subsection 2 does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.

5. For the purposes of the references in subsection 2 to an agent acting within the authority of a durable power of attorney for an incapacitated principal, "incapacitated principal" means a principal who is an incapacitated person, no adjudication of incapacity before death is necessary, and the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

SECTION 35. AMENDMENT. Section 30.1-09-09 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-09. ~~(2-609)~~ (2-607) Nonexoneration. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

SECTION 36. AMENDMENT. Section 30.1-09-10 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-10. ~~(2-610)~~ (2-608) Exercise of power of appointment. ~~A~~ In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, ~~does not~~ expresses an intention to exercise a power of appointment held by the testator ~~unless specific reference is made to the power or there is some other indication of~~ only if the power is a general power and the creating instrument does not contain a

gift if the power is not exercised or the testator's will manifests an intention to include the property subject to the power.

SECTION 37. AMENDMENT. Section 30.1-09-12 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-12. ~~(2-612)~~ (2-609) Ademption by satisfaction.

1. Property ~~which~~ a testator gave in ~~his~~ the testator's lifetime to a person is treated as a satisfaction of a devise ~~to that person~~ in whole or in part, only if the will provides for deduction of the ~~lifetime~~ gift, ~~or~~ the testator ~~declares~~ declared in a contemporaneous writing that the gift ~~is to be deducted from the devise or~~ is in satisfaction of the devise or that its value is to be deducted from the value of the devise, or the devisee ~~acknowledges~~ acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

2. For the ~~purpose~~ purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or ~~as of~~ at the ~~time of~~ testator's death ~~of the testator~~, whichever occurs first.

3. If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 30.1-09-05 and 30.1-09-06, unless the testator's contemporaneous writing provides otherwise.

SECTION 38. AMENDMENT. Section 30.1-09-13 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-13. ~~(2-701)~~ (2-514) Contracts concerning succession. A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after July 1, 1975, can be established only by:

1. Provisions of a will stating material provisions of the contract;

2. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

3. A writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

SECTION 39. Chapter 30.1-09.1 of the North Dakota Century Code is created and enacted as follows:

30.1-09.1-01. (2-701) Scope. In the absence of a finding of a contrary intention, the rules of construction in this chapter control the construction of a governing instrument. The rules of construction in this chapter apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provisions or governing instrument.

30.1-09.1-02. (2-702) Requirement of survival by one hundred twenty hours.

1. For the purposes of this title, except for purposes of sections 30.1-31-21 through 30.1-31-30, and except as provided in subsection 4 an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.

2. Except as provided in subsection 4 and except for a security registered in beneficiary form under sections 30.1-31-21 through 30.1-31-30, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

3. Except as provided in subsection 4, if it is not established by clear and convincing evidence that one of two coowners with right of survivorship survived the other coowner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours and there are more than two coowners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of coowners. For purposes of this subsection, the term "coowners with right of survivorship" includes joint tenants, tenants by the entireties, and other coowners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

4. This section does not apply if:

   a. The governing instrument contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

   b. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specific period or expressly requires the individual to survive the event by a specific period;

   c. Imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3 of section 47-02-27.1, or to become invalid under subdivision b of subsection 1, subdivision b of subsection 2, or subdivision b of subsection 3 of section 47-02-27.1; or

   d. The application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.

5. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the

beneficiary's apparent entitlement under the terms of the governing instrument, before the payer or other third party received written notice of a claimed lack of entitlement under this section. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claimed lack of entitlement under this section.

b. Written notice of a claimed lack of entitlement under subdivision a must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

6. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

30.1-09.1-03. (2-703) Choice of law as to meaning and effect of governing instrument. The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in chapter 30.1-05, the provisions relating

to exempt property and allowances described in chapter 30.1-07, or any other public policy of this state otherwise applicable to the disposition.

30.1-09.1-04. (2-704) Power of appointment - Meaning of specific reference requirement. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference, to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

30.1-09.1-05. (2-705) Class gifts construed to accord with intestate succession.

1. Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

2. In addition to the requirements of subsection 1, in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

3. In addition to the requirements of subsection 1, in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

30.1-09.1-06. (2-706) Life insurance - Retirement plan - Account with payable on death designation - Transfer-on-death registration - Deceased beneficiary.

1. In this section:

   a. "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

   b. "Beneficiary" means the beneficiary of a beneficiary designation and includes a class member if the beneficiary designation is in the form of a class gift and includes an individual or class member who was

deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.

c. "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

d. "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

e. "Stepchild" means a child of the decedent's surviving, deceased, or former spouse, and not of the decedent.

f. "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 30.1-09.1-02.

2. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

a. Except as provided in subdivision d, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

b. Except as provided in subdivision d, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary of beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this subdivision, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

c. For purposes of section 30.1-09.1-01, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

d. If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one beneficiary designation, and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

a. Except as provided in subdivision b, the property passes under the primary substitute gift.

b. If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

c. In this subsection:

(1) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(2) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(3) "Younger-generation beneficiary designation" means a beneficiary designation that is to a descendant of a beneficiary of the primary beneficiary designation, is an alternative beneficiary designation with respect to the primary beneficiary designation, is a beneficiary designation for which a substitue gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

4. a. A payer is protected from liability in making payments under the terms of the beneficiary designation until the payer has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payer, but not the recipient, from all claims for the amounts paid. A payer is liable for a payment made after the payer has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

b. The written notice of the claim must be mailed to the payer's main office or home by registered mail, return receipt requested, or served upon the payer in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payer may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payer from all claims for the amounts paid.

5. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item or property or benefit, to the person who is entitled to it under this section.

b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

30.1-09.1-07. (2-707) Survivorship with respect to future interests under the terms of a trust - Substitute takers.

1. In this section:

a. "Alternative future interest" means to an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

b. "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

c. "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

d. "Distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

e. "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

f. "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

g. "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distrubution date under section 30.1-09.1-02.

2. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

a. Except as provided in subdivision d, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

b. Except as provided in subdivision d, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

c. For purposes of section 30.1-09.1-01, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this seciton. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

d. If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subdivision a or b, the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

3. If, under subsection 2, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

a. Except as provided in subdivision b, the property passes under the primary substitute gift.

b. If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

c. In this subsection:

(1) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interest who left surviving descendants survived the distribution date.

(2) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(3) "Younger-generation future interest" means a future interest that is to a descendant of a beneficiary of the primary future interest, is an alternative future interest with respect to the primary future interest, is a future interest for which a substitute gift is created, and would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary of beneficiaries of the primary future interest.

(4) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

4. If, after the application of subsections 2 and 3, there is no surviving taker, the property passes in the following order:

a. If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of

this section, the residuary clause is treated as creating a future interest under the terms of a trust.

b. If no taker is produced by the application of subdivision a, the property passes to the transferor's heirs under section 30.1-09.1-11.

30.1-09.1-08. (2-708) Class gifts to descendants, issue, or heirs of the body - Form of distribution if none specified. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

30.1-09.1-09. (2-709) Representation - Per capita at each generation - Per stirpes.

1. In this section:

   a. "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 30.1-09.1-02.

   b. "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

   c. "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 30.1-09.1-02.

2. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

3. If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are surviving children of the designated ancestor and deceased children who left surviving descendants. Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

4. For the purposes of subsections 2 and 3, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

30.1-09.1-10. (2-710) Worthier-title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", "family", or language of similar import does not create or presumptively create a reversionary interest in the transferor.

30.1-09.1-11. (2-711) Future interests in heirs and like. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family", or language of similar import, the property passes to those persons, including the state under section 30.1-04-05, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

SECTION 40. Chapter 30.1-10 of the North Dakota Century Code is created and enacted as follows:

30.1-10-01. (2-801) Disclaimer of property interests.

1. A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction or any restriction or limitation on the right to disclaim contained in the governing instrument. For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a disabled person, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.

2. The following rules govern the time when a disclaimer must be filed or delivered:

   a. If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and the interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner

or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by registered mail to any personal representative or other fiduciary of the decedent or donee of the power.

b. If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and the interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof must be delivered in person or mailed by registered mail to the person who has legal title to or possession of the interest disclaimed.

c. A surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to the survivor by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to the survivor, if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and has not accepted a benefit under it.

d. If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the register of deeds of the county in which the property or interest disclaimed is located.

3. The disclaimer must describe the property or interest disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant.

4. The effects of disclaimer are:

a. If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A

disclaimer relates back for all purposes to the date of death of the decedent.

b. If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interst devolves as if the disclaimant has predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

c. The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

5. The right to disclaim property or an interest therein is barred by an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor; a written waiver of the right to disclaim; an acceptance of the property or interest or a benefit under it; or a sale of the property or interest under judicial sale made before the disclaimer is made.

6. This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

7. An interest in property that exists on the effective date of this section as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine months after the effective date of this section.

30.1-10-02. (2-802) Effect of divorce, annulment, and decree of separation.

1. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the spouse is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

2. For purposes of chapters 30.1-04 through 30.1-07 and section 30.1-13-03, a surviving spouse does not include:

a. An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless

subsequently that participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

b. An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

c. An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

30.1-10-03. (2-803) Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.

1. In this section:

a. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

b. "Governing instrument" means a governing instrument executed by the decedent.

c. "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation, in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer or the decedent then had capacity to exercise the power.

2. An individual who intentionally and feloniously kills the decedent forfeits all benefits under this title with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

3. The intentional and felonious killing of the decedent:

a. Revokes any revocable disposition or appointment of property made by the decedent to the killer in a governing instrument, provision in a governing instrument conferring a general or nongeneral power of appointment on the killer, and nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent.

b. Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

4. The severance under subdivision b of subsection 3 does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a

writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

5. Provisions of a governing instrument which are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

6. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from any wrong.

7. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance or evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

8. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payer or other third party received written notice of a claimed forfeiture or revocation under this section. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claimed forfeiture or revocation under this section.

b. Written notice of a claimed forfeiture or revocation under this subsection must be mailed to the payer's or third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party

from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

9. a. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

30.1-10-04. (2-804) Revocation of probate and nonprobate transfers by divorce - No revocation by other changes of circumstances.

1. In this section:

a. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

b. "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30.1-10-02. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

c. "Divorced individual" includes an individual whose marriage has been annulled.

d. "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the marriage to the former spouse.

e. "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

f. "Revocable", with respect to a disposition, appointment, provision, or nomination means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

2. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

a. Revokes any revocable disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse, provision in a governing instrument conferring a general or special power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.

b. Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of former spouses into tenancies in common.

3. A severance under subdivision b of subsection 2 does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

4. Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

5. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

6. No change of circumstances other than as described in this section and in section 30.1-10-03 effects a revocation.

7. a. A payer or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payer or other third party received written notice of the divorce, annulment, or remarriage. A payer or other third party is liable for a payment made or other action taken after the payer or other third party received written notice of a claim forfeiture or revocation under this section.

b. Written notice of the divorce, annulment, or remarriage under this subdivision must be mailed to the payer's or other third party's main office or home by registered mail or served upon the payer or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payer or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payer or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

8. a. A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

b. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

SECTION 41. AMENDMENT. Section 30.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-11-01. ~~(2-901)~~ (2-515) Deposit of will with court in testator's lifetime. A will may be deposited by the testator or ~~his~~ the testator's agent with any court for safekeeping, under rules of the court. The will ~~shall~~ must be sealed and kept confidential. During the testator's lifetime, a deposited will ~~shall~~ must be delivered only to ~~him~~ the testator or to a person authorized in a writing signed by ~~him~~ the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ~~assure~~ ensure that it will be resealed and ~~left~~ kept on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to ~~him~~ that person on request; or the court may deliver the will to the appropriate court.

SECTION 42. AMENDMENT. Section 30.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-11-02. ~~(2-902)~~ (2-516) Duty of custodian of will - Liability. After the death of a testator and on request of an interested person, ~~any~~ a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate, and if none is known, to an appropriate court. ~~Any~~ A person who willfully fails to deliver a will is liable to any person aggrieved for ~~the~~ any damages ~~which~~ that may be sustained by the failure. ~~Any~~ A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

SECTION 43. AMENDMENT. Section 30.1-14-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-14-03. (3-303) Informal probate - Proof and findings required.

1. In an informal proceeding for original probate of a will, the court shall determine whether:

   a. The application is complete.

   b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief.

   c. The applicant appears from the application to be an interested person as defined in subsection ~~21~~ 25 of section 30.1-01-06.

   d. On the basis of the statements in the application, venue is proper.

   e. An original, duly executed, and apparently unrevoked will is in the court's possession.

   f. Any notice required by section 30.1-13-04 has been given and that the application is not within section 30.1-14-04.

   g. It appears from the application that the time limit for original probate has not expired.

2. The application ~~shall~~ must be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection 4, if it appears that this or another will of the decedent has been the subject of a previous probate order.

3. A will ~~which~~ that appears to have the required signatures and which contains an attestation clause showing that requirements of execution under ~~sections~~ section 30.1-08-02~~, 30.1-08-03,~~ or 30.1-08-06 have been met ~~shall~~ must be probated without further proof. In other cases, the court may assume execution if the will appears to have been properly executed, or ~~he~~ the court may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

4. Informal probate of a will ~~which~~ that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

5. A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection 1 may be probated in this state upon receipt by the court of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

SECTION 44. AMENDMENT. Section 30.1-14-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-14-08. (3-308) Informal appointment proceedings - Proof and findings required.

1. In informal appointment proceedings, the court ~~must~~ shall determine whether:

   a. The application for informal appointment of a personal representative is complete.

   b. The applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief.

   c. The applicant appears from the application to be an interested person as defined in subsection ~~21~~ 25 of section 30.1-01-06.

   d. On the basis of the statements in the application, venue is proper.

   e. Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator.

   f. Any notice required by section 30.1-13-04 has been given.

   g. From the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

2. Unless section 30.1-17-12 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in subsection 3 of section 30.1-17-10 has been appointed in this or another county of this state, that, unless the applicant is the domiciliary personal representative or ~~his~~ the representative's nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

SECTION 45. AMENDMENT. Section 30.1-20-05 of the North Dakota Century Code is amended and reenacted as follows:

30.1-20-05. ~~**(3-905)**~~ (2-517) **Penalty clause for contest.** A provision in a will purporting to penalize ~~any~~ an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

SECTION 46. AMENDMENT. Subsection 2 of section 30.1-29-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. If, at any time in the proceeding, the court determines that the interests of the person to be protected are or may be inadequately represented, it may appoint an attorney to represent the person to be protected. An attorney appointed by the court to represent a protected person has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, ~~advanced age,~~ chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer, employee, or special appointee of the court. In any case where the veterans' administration is or may be an interested party, a certificate of an authorized official of the veterans' administration that the person to be protected has been found incapable of handling the benefits payable on examination in accordance with the laws and regulations governing the veterans' administration shall be prima facie evidence of the necessity for such appointment.

SECTION 47. AMENDMENT. Subsection 1 of section 30.1-31-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this ~~section~~ chapter, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section

30.1-31-08 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30.1-31-08, and the right of survivorship continues between the surviving parties.

SECTION 48. AMENDMENT. Subsection 2 of section 30.1-31-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08, to the extent necessary to discharge the claims and allowances described in subsection 1 remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.

SECTION 49. AMENDMENT. Subsection 1 of section 47-24.1-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A person nominated under section 47-24.1-03 or designated under section 47-24.1-09 as custodian may decline to serve by delivering a valid disclaimer under ~~chapter 47-11.1~~ section 30.1-10-01 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 47-24.1-03, the person who made the nomination may nominate a substitute custodian under section 47-24.1-03; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection 1 of section 47-24.1-09. The custodian so designated has the rights of a successor custodian.

SECTION 50. REPEAL. Chapters 30.1-05, 30.1-06, sections 30.1-08-03, 30.1-09-01, 30.1-09-02, chapters 30.1-10, 31-12, and 47-11.1 of the North Dakota Century Code, and section 30.1-09-11 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 51. EFFECTIVE DATE. This Act becomes effective on August 1, 1995.

Approved April 14, 1993
Filed April 15, 1993

JUDICIAL PROOF

CHAPTER 335

SENATE BILL NO. 2081
(Judiciary Committee)
(At the request of the Supreme Court)

WITNESS FEE AND EXPENSE PAYMENT

AN ACT to amend and reenact section 31-01-16 of the North Dakota Century Code, relating to witness fees and expenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-01-16 of the 1989 Supplement to the North Dakota Century Code, as amended by section 130 of chapter 326 of the 1991 Session Laws of North Dakota, is amended and reenacted as follows:

31-01-16. Compensation and mileage and travel expense of witness ~~— County to pay fees except for district court fees in criminal action~~. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.

2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases~~, witness fees and expenses on the part of the state must be paid out of the county treasury of the proper county except that~~ in district court cases, the attorney general shall pay prosecution witness fees and expenses, and the supreme court shall pay other witness fees for indigents and expenses. Prisoners may not be compensated as witnesses under this section.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 2, 1995.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 336

SENATE BILL NO. 2126
(Judiciary Committee)
(At the request of the Attorney General)

CHILD VICTIM EVIDENCE

AN ACT to amend and reenact subsection 1 of section 31-04-04.1 of the North Dakota Century Code, providing for the admission as evidence of the videotaped statement of the child victim of certain sexual offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 31-04-04.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. In any prosecution for a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:

   a. The court determines there is reasonable cause to believe that the child victim would experience serious emotional trauma as a result of in-court participation in the proceeding;

   b. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;

   ~~b.~~ c. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;

   ~~c.~~ d. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and

   ~~d.~~ e. All questioning must be done by ~~attorneys for the prosecution and the defense; however, upon~~ the prosecutor or counsel for the defendant unless the defendant is an attorney pro se. An attorney pro se must conduct all questioning from outside the presence of the child. Upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 337

HOUSE BILL NO. 1394
(Representative Rydell)

MEDICAL RECORDS

AN ACT relating to authentication of medical records by electronic signature and to the recording of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Medical records authentication. If appropriate safeguards have been taken to limit access to medical records in an electronic data storage system, a medical record in an electronic data storage system may be authenticated by an electronic signature or a computer-generated signature code.

SECTION 2. Medical records recording. The recording of hospital medical records by an electronic image system or reproduction process is considered a photographic process. The making or recording of hospital medical records by electronic data processing systems is considered an original written record, and printout or other types of retrieved information in written or printed form must be treated as original records in all courts or administrative agencies for the purpose of its admissibility into evidence.

Approved April 9, 1993
Filed April 9, 1993

JUDICIAL REMEDIES

CHAPTER 338

SENATE BILL NO. 2057
(Senator Evanson)
(Representative Cleary)

ARCHITECT AND ENGINEER VOLUNTEER IMMUNITY

AN ACT to provide for immunity from liability for losses caused by an architect or a professional engineer's acts, errors, or omissions in the performance of voluntary engineering services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions - Voluntary engineering services - Immunity.

1. As used in this section:

   a. "Architect" means a person registered under chapter 43-03 as an architect.

   b. "Building inspection official" means any appointed or elected federal, state, or local official with overall executive responsibility to coordinate building inspection in the jurisdiction in which the emergency or event has occurred.

   c. "Law enforcement official" means any appointed or elected federal, state, or local official with overall executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or event has occurred.

   d. "Professional engineer" means a person licensed under chapter 43-19.1 as a professional engineer.

   e. "Public official" means any federal, state, or locally elected official with overall executive responsibility in the jurisdiction in which the emergency or event has occurred.

   f. "Public safety official" means any appointed or elected federal, state, or local official with overall executive responsibility to coordinate public safety in the jurisdiction in which the emergency or event has occurred.

2. An architect or a professional engineer who voluntarily, without compensation, provides architectural or structural, electrical, mechanical, or other engineering services at the scene of a declared national, state, or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, collapse, or other similar disaster or catastrophic event at the request of a national, state, or local public official, law enforcement official, public safety official, or building inspection official acting in an official capacity, is not liable for any personal injury, wrongful death, property damage, or other loss caused by

the architect's or professional engineer's acts, errors, or omissions in the performance of any engineering services for any structure, building, piping, or other engineered system, either publicly or privately owned.

3. The immunity provided in this section applies only to a voluntary engineering service that occurs within ninety days of the emergency, disaster, or catastrophic event, unless extended by the governor under chapter 37-17.1.

4. Nothing in this section provides immunity for wanton, willful, or intentional misconduct.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 339

HOUSE BILL NO. 1515
(Representatives Kretschmar, Hokana, R. Berg)
(Senators Tallackson, Traynor, Dotzenrod)
(Approved by the Delayed Bills Committee)

TORT REVISION LAW EXTENSION

AN ACT to repeal section 15 of chapter 404 of the 1987 Session Laws of North Dakota, relating to the expiration date of legislation concerning tort liability; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15 of chapter 404 of the 1987 Session Laws of North Dakota is repealed.

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

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 340

HOUSE BILL NO. 1484
(Representatives Ring, Gates)
(Senators Holmberg, Kelly)

CRIME PROFITS RECOVERY

AN ACT to provide for the recovery of profits from a crime by a person with a right to recover from a convicted felon for injuries caused by the convicted felon.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Profits from the crime of a felon - Definitions - Action to recover profits from the crime - Violations - Remedies cumulative - Limitations of actions.

1. As used in this section:

   a. "Beneficiary" means:

      (1) A person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

      (2) If a beneficiary has died, a person or estate that is entitled to recover damages.

      (3) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, a person described in chapter 32-21 or any beneficiary of a will of the decedent who had a right under that will to receive more than twenty-five percent of the value of the estate of the decedent.

   b. "Beneficiary's interest in the profits from the crime" means that portion of the profits from the crime necessary to pay the following:

      (1) In the case of a beneficiary described in paragraph 1 or 2 of subdivision a, those damages which, under applicable law, other than the provisions of this section, the beneficiary has a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

      (2) In the case of the beneficiary described in paragraph 3 of subdivision a, those damages which under all the circumstances of the case may be just.

c. "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in this state, either by a court or jury trial or by entry of a plea in court.

d. "Felony" means a felony defined by any North Dakota or federal statute.

e. "Profits from the crime" means:

(1) Any property obtained through or income substantially related to the commission of a crime of which the defendant was convicted;

(2) Any property obtained by or income substantially related to the sale, conversion, or exchange of proceeds of a crime, including any gain realized by the sale, conversion, or exchange; and

(3) Any property that the convicted felon obtained or income substantially related to the commission of the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income substantially related to the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange.

f. "Representative of the felon" means any person or entity receiving profits from the crime by designation of the felon, or on behalf of the felon or in the stead of the felon, whether by the felon's designation or by operation of law.

2. All profits from the crime belonging to the convicted felon are subject to a constructive trust for the benefit of the beneficiaries set forth in this section. The trust continues until six years after the date of conviction. If an action is filed by a beneficiary to recover the beneficiary's interest in a trust within that time limitation, the trust character of the property continues until the conclusion of the action.

3. a. Any beneficiary may bring an action against a convicted felon or representative of the felon to recover the beneficiary's interest in the trust established by this section.

b. The action may be brought in the district court where the beneficiary resides, where the convicted felon resides, or where the proceeds are located.

c. If the court determines that a beneficiary is entitled to profits from the crime pursuant to this section, the court shall order the payment from profits from the crime that have been received, and if that is insufficient, from profits from the crime that may be received in the future.

d. A beneficiary's interest in the profits from the crime must be reduced by the following amount:

(1) Money paid to the beneficiary from the crime victim's reparations fund under chapter 65-13 because of the crime for which the felon was convicted.

(2) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(3) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

e. In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section must be applied to reduce the amount of the unsatisfied judgment or order.

4. If there are two or more beneficiaries and the available profits from the crime are insufficient to pay all beneficiaries, the profits from the crime may be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them. Twenty-five percent of the profits from the crime must be reserved for payment to the beneficiaries.

5. a. The attorney general shall bring an action to require profits from the crime received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

b. An action may be brought under this subdivision within six months after the receipt of profits from the crime by a convicted felon or six months after the date of conviction, whichever is later. The action must be brought in the district court for Burleigh County.

c. If the attorney general proves that the profits from the crime are subject to a constructive trust pursuant to this section and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order all proceeds deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subsection 4, or until the expiration of the period specified in subsection 2.

d. In any action brought pursuant to subsection 4 or 5, upon motion of a party the court shall grant a preliminary injunction to prevent any waste of the profits from the crime, if it appears that the profits from the crime are subject to the provisions of this section and that they may be subject to waste.

6. The remedies provided by this section are in addition to other remedies provided by law. No period of limitations, except those provided by this section, limits the right of recovery under this section.

7. The offender or any person contracting with an offender shall notify the attorney general at least thirty days before the transfer of any profits from a crime. A person who willfully violates this subsection is guilty of a class A misdemeanor.

8. Any contract between a convicted felon or representative of the felon and another person which provides for the payment of profits from a crime other than as provided by this section is void.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 341

SENATE BILL NO. 2458
(Senators Keller, Goetz, Streibel)
(Representatives Bodine, Byerly, Wardner)

CARBON DIOXIDE PIPELINES

AN ACT to amend and reenact subsection 10 of section 32-15-02, subsection 1 of section 49-19-01, sections 49-19-11, 49-19-19, and subsection 11 of section 49-22-03 of the North Dakota Century Code, relating to pipelines for the transportation of carbon dioxide.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 32-15-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Oil, gas, ~~and~~ coal, and carbon dioxide pipelines and works and plants for supplying or conducting gas, oil, coal, carbon dioxide, heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such gas, oil, coal, carbon dioxide, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof.

SECTION 2. AMENDMENT. Subsection 1 of section 49-19-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, ~~or~~ coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, ~~or~~ coal, or carbon dioxide by pipelines;

SECTION 3. AMENDMENT. Section 49-19-11 of the North Dakota Century Code is amended and reenacted as follows:

49-19-11. Pipeline carrier must agree to carry without discrimination. A common pipeline carrier, in the acceptance of the provisions of this chapter, shall agree expressly that it, without discrimination, will accept, carry or purchase, the oil, coal, ~~or~~ gas, or carbon dioxide of the state or of any person not the owner of any pipeline, operating a lease or purchasing oil, coal, ~~or~~ gas, or carbon dioxide at prices and under regulations to be prescribed by the commission.

SECTION 4. AMENDMENT. Section 49-19-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-19-19. Discrimination between shippers in facilities furnished, service rendered, and rates prohibited. No common pipeline carrier shall discriminate between or against shippers in regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, ~~or~~ gas, or carbon dioxide, nor shall there be any discrimination in the transportation of crude petroleum, coal, ~~or~~ gas, or carbon dioxide produced or purchased by itself directly or indirectly. In this connection the pipeline shall be considered as a shipper of the crude petroleum, coal, ~~or~~ gas, or carbon dioxide produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation, directly or indirectly, shall charge, demand, collect, or receive from anyone a greater or less compensation for any service rendered than from another for a like contemporaneous service. This shall not limit the right of the commission to prescribe rates and regulations from or to some places different from other rates or regulations for transportation from or to other places as it may determine, nor shall any carrier be guilty of discrimination when obeying any order of the commission. Where there shall be offered for transportation more crude petroleum ~~or~~, coal, or carbon dioxide than can be transported immediately, the same shall be apportioned equitably. Gas shall be taken on a pro rata basis or on such basis as may be established by the industrial commission pursuant to section 38-08-06.

[1] **SECTION 5. AMENDMENT.** Subsection 11 of section 49-22-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Transmission facility" means any of the following:

    a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts.

    b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, ~~or~~ liquid hydrocarbon products, or carbon dioxide. The provision of this subdivision shall not apply to an oil or gas pipeline gathering system. For purposes of this chapter a gathering system shall include the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility.

    c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.

Approved March 25, 1993
Filed March 26, 1993

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[1] NOTE: Section 49-22-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 342

HOUSE BILL NO. 1258
(Representatives Porter, Coats, Soukup)
(Senators Mushik, Nething, Robinson)

DEFICIENCY JUDGMENTS ON COMMERCIAL PROPERTY

AN ACT to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to commercial real property deficiency judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-19 of the North Dakota Century Code is created and enacted as follows:

Deficiency judgments on commercial real property. Notwithstanding any other provision of law, a person holding a mortgage may obtain a deficiency judgment against the mortgagor of commercial real property contracted for after the effective date of this Act. In an action for the foreclosure of a mortgage on commercial real property, the plaintiff shall state in the complaint whether a deficiency judgment will be sought, identify the defendant or defendants claimed to be personally liable for the amount due, and demand a deficiency judgment against those defendants. Within ten days after filing and serving the summons and complaint on the defendants, the plaintiff seeking a deficiency judgment on commercial real property shall file with the clerk of district court a request for an appraisal of the real property by a licensed or certified appraiser and serve a copy of the request upon the defendants. The request must contain the plaintiff's agreement to pay the cost of the appraisal, which must be included as a cost allowed to the plaintiff if judgment is entered granting foreclosure. Upon the filing of the request, the plaintiff shall arrange for an appraisal of the property and shall notify the defendants, at their last known address, of the request for an appraisal. Within not more than twenty days after completion of the appraisal, the appraiser shall provide to the plaintiff and file with the clerk of court a written report indicating the present fair market value of the commercial real property. The plaintiff shall also serve copies of the report on the defendants named in the complaint to be personally liable. Within fifteen days of the filing and serving of the report of appraisal, any party may file a notice of intention to obtain an additional appraisal at the party's own expense. The appraisal report must be filed within thirty days of the filing of the notice of intention and must be considered, with other appraisal reports filed, in the determination by the court of the present fair market value of the property. At the time of the entry of the judgment, the court shall include in its findings of fact the present fair market value of the property and, if the present fair market value is less than the amount found to be due the plaintiff, identify the persons who are liable for any deficiency remaining after a sheriff's sale of the property pursuant to foreclosure judgment. The judgment must be docketed as a money judgment against the persons personally liable. Upon entry of an order confirming the sheriff's sale in the foreclosure, the clerk of court shall note the amount to be credited thereon, which must be the amount bid at the sheriff's sale, less the cost of the sheriff's sale, which may not be less than the present fair market value established by the court. At any time after the

sheriff's sale and final entry of judgment, the plaintiff may pursue the same remedies to collect the judgment as those available to collect other money judgments. The amount collectible must include the entire amount found to be due the plaintiff in the judgment, together with interest on the amount of the judgment at the rate provided in the note secured by the mortgage, less the amount credited by the clerk of court upon entry of the order confirming the sheriff's sale. As used in this section, "commercial real property" means any real property except residential real property consisting of fewer than three residential units and agricultural property as defined by section 57-02-01. As used in this section, "fair market value" means the highest price that commercial real property can be sold for in the open market by a willing seller to a willing buyer, neither acting under compulsion and both exercising reasonable judgment.

The provisions of this section are not available unless the promissory note and mortgage executed by the parties named as defendants in an action for a deficiency judgment contains language located immediately above the signatures of the parties advising them that the lender has the right to proceed to obtain and collect a deficiency judgment against the parties personally liable, together with foreclosure of the real property mortgaged under applicable laws.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 343

SENATE BILL NO. 2411
(Senator W. Stenehjem)
(Representative Clayburgh)

MORTGAGE FORECLOSURE WITH NOTE

AN ACT to amend and reenact sections 32-19-07 and 32-19.1-07 of the North Dakota Century Code, relating to mortgage foreclosure actions and other actions where real property secures the debt.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-07 of the North Dakota Century Code is amended and reenacted as follows:

32-19-07. Other suits ~~prohibited~~ permitted. Neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made between July 1, 1937, and July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given between July 1, 1937, and July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract. Except as otherwise provided in sections 32-19-04 and 32-19-06, neither before nor after the rendition of a judgment for the foreclosure of a real estate mortgage or for the cancellation or foreclosure of a land contract made after July 1, 1951, shall the mortgagee or vendor, or the successor in interest of either, be authorized or permitted to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed. It is the intent of this section that no deficiency judgment shall be rendered upon any note, mortgage, or contract given after July 1, 1951, to secure the payment of money loaned upon real estate or to secure the purchase price of real estate, and in case of default the holder of a real estate mortgage or land contract shall be entitled only to a foreclosure of the mortgage or the cancellation or foreclosure of the contract except as provided by sections 32-19-04 and 32-19-06. However, notwithstanding other provisions of state law, where a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after the effective date of this Act, a mortgagee may bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclose the mortgage given to secure the note or other obligation. The provisions of this section allowing a mortgagee to bring an action on the promissory note or other obligation or the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation apply only to residential real property consisting of four or fewer residential units.

SECTION 2. AMENDMENT. Section 32-19.1-07 of the North Dakota Century Code is amended and reenacted as follows:

32-19.1-07. No deficiency judgment allowed. When any mortgage has been foreclosed under this chapter, the mortgagee or any party claiming by, through, or under said mortgagee shall not be entitled to any judgment for deficiency. However, notwithstanding other provisions of state law, where a promissory note or other obligation and a mortgage, other than a first mortgage, upon real estate have been given to secure a debt contracted on or after the effective date of this Act, a mortgagee may bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation. The provisions of this section allowing a mortgagee to bring an action on the promissory note or other obligation of the mortgagor if the mortgagee waives the right to foreclosure of the mortgage given to secure the note or other obligation apply only to residential real property consisting of four or fewer residential units.

Any promissory note taken by a lender in connection with a second mortgage on real estate must contain the following notice:

> "This promissory note may be the basis for a personal action against the promisor or promisors in addition to other remedies allowed by law."

The notice must appear in printed or typed boldface capital letters within the body of the promissory note.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 344

HOUSE BILL NO. 1279
(Representatives Byerly, Brown)

FORECLOSURE EFFECT ON ABANDONED PROPERTY

AN ACT to amend and reenact section 32-19-41 of the North Dakota Century Code, relating to the disposal by a lender of abandoned personal property located on real estate foreclosed upon by a lender.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-41 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-41. Abandoned personal property - Disposal by record title owner. The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement for which a sheriff's deed has been issued and recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted. This section applies only to tracts of land not exceeding forty acres [64.76 hectares].

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 345

HOUSE BILL NO. 1377
(Representatives Keiser, Clayburgh, Nicholas, Nichols, Stenson)
(Senator Kelsh)

ENVIRONMENTAL DAMAGE LENDER'S LIABILITY

AN ACT to limit a lender's liability to third parties for environmental damage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Lender-owner" means any person who by virtue of foreclosure, whether by action, advertisement, or voluntary, nonjudicial foreclosure, or upon receipts of an assignment, bill of sale, or deed in lieu of foreclosure, becomes the owner of property.

2. "Representative" means any person acting in the capacity of a receiver, conservator, guardian ad litem, personal representative of a deceased person, or trustee or fiduciary of property, except a trustee or a fiduciary is limited to an entity acting as trustee or fiduciary and which is chartered by the state banking commissioner, the office of the United States comptroller of the currency, or the office of thrift supervision.

3. "Third party" means a person other than a governmental entity, seeking to enforce a federal, state, or local environmental statute, ordinance, rule, permit, or order.

4. "Third-party liability" means liability to a third party for any claim arising out of or resulting from contamination or pollution, including a claim for personal injury, consequential damages, lost profits, exemplary damages, or property damages.

SECTION 2. Third-party liability - Environmental damage.

1. Except as preempted by federal law, a person may not be deemed to be an owner or operator of property who, without participating in the management of the property, holds indicia of ownership primarily to protect a security or lien hold interest in the property or in property in which the property is located.

2. A lender-owner or representative is not by virtue of becoming the owner of property liable for any third-party liability arising from contamination or pollution emanating from the property before the date the title vests in the lender-owner or representative. For the purposes of this section, the issuance of a sheriff's certificate of sale is not sufficient to vest title in the lender-owner or representative.

3. A lender-owner or representative is not by virtue of becoming the owner of property liable for any third-party liability arising from contamination

or pollution emanating from the property during the period of ownership so long as, and to the extent that:

a. The lender-owner or representative does not knowingly cause new contamination or pollution or does not knowingly allow others to cause new contamination or pollution;

b. The lender-owner has caused an environmental professional to conduct a visual inspection of the property to determine the presence and condition of hazardous wastes or substances and obvious contamination or pollution; and

c. The lender-owner found by the enforcing agency to be in noncompliance with federal or state laws takes steps to assure compliance with applicable laws.

SECTION 3. Extent of application. This Act applies to a lender-owner or representative as long as the lender-owner or representative makes reasonable efforts to resell the property and does not affect any liability expressly created under federal or state health or environmental statutes, rules, permits, or orders. This Act does not apply to a lender-owner who transports or disposes of waste for profit.

SECTION 4. Applicability to civil actions. This Act applies to civil actions filed on or after its effective date.

Approved April 1, 1993
Filed April 2, 1993

LABOR AND EMPLOYMENT

CHAPTER 346

HOUSE BILL NO. 1463
(Representatives Mahoney, Tollefson, Gulleson)
(Senators Dotzenrod, Holmberg)

EMPLOYER RETRIBUTION PROHIBITION

AN ACT relating to job protection for employees who report illegal activities; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Prohibited action - Report of complaint to commissioner of labor - Penalty.

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:

   a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal or state law or rule to an employer or to a governmental body or law enforcement official.

   b. The employee is requested by a public body or official to participate in an investigation, hearing, or inquiry.

   c. The employee refuses an employer's order to perform an action that the employee believes violates state or federal law or rule or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

2. The employee may seek the assistance of the commissioner of labor, who may use the authority of chapters 34-06 and 34-14 to investigate, hold hearings, and otherwise assure compliance with this section.

3. An employer who willfully violates this section is guilty of an infraction.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 347

HOUSE BILL NO. 1491
(Representatives Austin, Dorso, Hokana, Mahoney)
(Senators Kinnoin, Krebsbach)

INDEPENDENT CONTRACTORS

AN ACT to create and enact a new section to chapter 34-05, a new section to chapter 34-14, a new section to chapter 52-04, and a new section to chapter 65-04 of the North Dakota Century Code, relating to determining an independent contractor's status and to independent contractors for purposes of wage claims, unemployment compensation contributions, and workers' compensation premiums; and to amend and reenact section 65-01-03 of the North Dakota Century Code, relating to independent contractors for purposes of workers' compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-05 of the North Dakota Century Code is created and enacted as follows:

Independent contractors - Determination made by commissioner. A person beginning work or working as an independent contractor may apply to the commissioner to receive verification of independent contractor status. The commissioner, upon receiving an application, shall review the circumstances of the applicant's job and other relevant information. When the information supports a finding under the "common law" test that the applicant will be working or is working as an independent contractor, the commissioner shall issue a determination to verify the status of the applicant as an independent contractor and shall issue the independent contractor an identification number that will be invalid if the applicant's job changes. If the applicant's job changes, the applicant may reapply for a determination to verify independent contractor status.

SECTION 2. A new section to chapter 34-14 of the North Dakota Century Code is created and enacted as follows:

Retroactive payment not required. When the commissioner reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 1 of this Act and determines that the party described as an independent contractor is an employee for purposes of wages, rather than an independent contractor, the commissioner may not require the party determined to be the employer to pay wages, in addition to those required by the contract, for that employee, or any interest, penalty, or delinquency fee with respect to those wages, retroactive to the date the relationship with the employee began, unless, however, the commissioner determines that the employer willfully and intentionally entered the relationship with the purpose of avoiding the payment of wages. The commissioner may require the payment of wages for that employee as of the date the order declaring an employment relationship becomes final.

SECTION 3. A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

Retroactive payment not required. When the bureau reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 1 of this Act and determines that the party described as an independent contractor is an employee for purposes of unemployment compensation, rather than an independent contractor, the bureau may not require the party determined to be the employer to pay contributions for that employee, or any interest, penalty, or delinquency fee with respect to those contributions, retroactive to the date the relationship with the employee began, unless, however, the bureau determines that the employer willfully and intentionally entered the relationship with the purpose of avoiding unemployment compensation benefits. The bureau may require the payment of contributions for that employee as of the date the order declaring an employment relationship becomes final.

SECTION 4. AMENDMENT. Section 65-01-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-03. Person performing service for remuneration presumed an employee. Each person who performs services for another for a remuneration, whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied, is presumed to be an employee of the person for whom the services are performed, unless the person maintains a separate business establishment or holds that person out to render or renders services to the general public. In determining whether a person is an independent contractor or an employee, the ~~primary~~ test to be employed is the "common law" test.

SECTION 5. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Retroactive payment not required. When the bureau reviews a potential employment relationship involving an independent contractor who has a valid identification number issued under section 1 of this Act and determines that the party described as an independent contractor is an employee for purposes of workers' compensation premiums, rather than an independent contractor, the bureau may not require the party determined to be the employer to pay premiums for that employee, or any interest, penalty, or delinquency fee with respect to those premiums, retroactive to the date the relationship with the employee began, unless, however, the bureau determines that the employer willfully and intentionally entered the relationship with the purpose of avoiding workers' compensation premium payments. The bureau may require the payment of premiums for that employee as of the date the order declaring an employment relationship becomes final.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 348

SENATE BILL NO. 2097
(Political Subdivisions Committee)
(At the request of the Department of Labor)

MINIMUM WAGE EMPLOYERS

AN ACT to require the commissioner of labor to convene a wage conference committee; to create and enact a new section to chapter 34-06 of the North Dakota Century Code, relating to minimum wage requirements; to amend and reenact subsections 2 and 3 of section 34-06-01 of the North Dakota Century Code, relating to excluding certain employers from the requirements of the minimum wage rules; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 34-06-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Employee" includes any individual employed by an employer. ~~Provided~~ However, an individual is not an "employee" while engaged in a ridesharing arrangement, as defined in section 8-02-07. The term does not include a person engaged in firefighting or sworn law enforcement officers for a political subdivision of the state.

3. "Employer" includes any individual, partnership, association, corporation, the state and political subdivisions of the state, or any person or group of persons acting in the interest of an employer in relation to an employee.

SECTION 2. A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

Compensatory time. The state or a political subdivision of the state may provide for compensatory time for its employees if the state or political subdivision complies with the requirements of the Fair Labor Standards Act of 1938, as amended, [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 206] and any rules and interpretations adopted by the United States Department of Labor.

SECTION 3. COMMISSIONER OF LABOR TO CONVENE WAGE CONFERENCE COMMITTEE. The commissioner of labor shall convene a wage conference committee by August 1, 1993.

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

Approved April 12, 1993
Filed April 12, 1993

[1] NOTE: Section 34-06-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 349

HOUSE BILL NO. 1093
(Industry, Business and Labor Committee)
(At the request of the Department of Labor)

LABOR ORDER POSTING

AN ACT to amend and reenact section 34-06-12 of the North Dakota Century Code, relating to the posting of orders issued by the commissioner of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-12 of the North Dakota Century Code is amended and reenacted as follows:

34-06-12. Order issued by commissioner - Effective date - Posting. After the hearing provided for in section 34-06-11 has been held, the commissioner may make and render such order as may be necessary and proper to adopt such recommendations and to carry the same into effect and to require all employers in the occupation affected thereby to observe and comply with such recommendations and order. The order made by the commissioner becomes effective on the sixtieth day following its rendition. After the order has become effective, no employer may violate or disregard the terms or provisions thereof or employ any employee in any occupation covered thereby for longer hours or under different conditions or at a lower wage scale than are authorized therein. All effective orders must be reviewed annually. A copy of such order must be mailed by the commissioner to every employer affected thereby, and each such employer shall keep a copy of the order posted in a conspicuous place in ~~each room~~ a commonly frequented area of ~~his~~ the employer's establishment in which employees work. No order of the commissioner may permit the employment of any employee for more hours per day or week than the maximum fixed by this chapter.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 350

HOUSE BILL NO. 1308
(Representative Clayburgh)

MINIMUM WAGE EXEMPTION FOR DISABLED

AN ACT to amend and reenact section 34-06-15 of the North Dakota Century Code, relating to a special license issued by the commissioner of labor to employ a person at less than minimum wage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-15 of the North Dakota Century Code is amended and reenacted as follows:

34-06-15. Special license to employ at less than minimum wage ~~issued by commissioner~~. The commissioner may issue to an employee ~~who is physically defective by age or otherwise~~ whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any apprentice or learner in an occupation ~~which~~ that usually requires learners or apprentices, a special license authorizing the employment of ~~such~~ that licensee in an occupation in which a minimum wage has been established, at a wage less than ~~such~~ the minimum wage for that occupation. ~~Such~~ The commissioner shall issue the license ~~must be issued~~ under ~~such~~ rules ~~and regulations as~~ adopted by the commissioner ~~may establish~~.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 351

HOUSE BILL NO. 1436
(Representatives Gates, C. Carlson)
(Senator Heinrich)

CHILD LABOR LAWS

AN ACT to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to exemption of newspaper carriers and shopper carriers from North Dakota child labor laws; to amend and reenact sections 34-07-01, 34-07-02, 34-07-03, 34-07-05, 34-07-06, 34-07-11, 34-07-12, 34-07-14, 34-07-15, 34-07-16, 34-07-17, 34-07-18, 34-07-19, and 34-07-20 of the North Dakota Century Code, relating to who may employ youth under the age of fourteen in the state, who may issue certificates to minors who wish to work, the limitations on the hours a minor fourteen or fifteen years of age may work, and hazardous occupations in which minors may not be employed; and to repeal sections 34-07-07, 34-07-08, 34-07-10, and 34-07-13 of the North Dakota Century Code, relating to employment certificates for minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-07-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **34-07-01. Employment of minor under fourteen years of age prohibited.** No minor under fourteen years of age may be employed or permitted to work in~~, or in connection with, any factory, workshop, mercantile establishment, store, business office, telegraph office, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages~~ any occupation except farm labor, domestic service, or in the employment of, and under the direct supervision of, that minor's parent, guardian, or grandparent. Domestic service includes services of a household nature performed by an employee in or about a private home of the employer. No ~~person, firm, or corporation may employ any~~ minor under fourteen years of age may be employed in any business or service whatever during any part of the hours when the public schools of the district in which the minor resides are in session.

SECTION 2. AMENDMENT. Section 34-07-02 of the North Dakota Century Code is amended and reenacted as follows:

[2] **34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept.** No minor ~~between the age of fourteen and sixteen years~~ fourteen or fifteen years of age may be employed or permitted to work in any

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[1] NOTE: Section 34-07-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

[2] NOTE: Section 34-07-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~factory, workshop, or mercantile establishment~~ occupation except farm labor, domestic service, or in the employment of, and under the direct supervision of, the minor's parent or guardian unless the minor has graduated from high school or is exempt from compulsory school attendance or, unless the ~~person, firm, or corporation employing him procures and keeps on file an~~ minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, or corporation employing a minor must keep on file a completed employment certificate, for each minor, as provided in this chapter. The employment certificate must be accessible to inspection by the ~~superintendent of schools of the municipality, if one is employed, otherwise to the business manager of the school board or the secretary of the board of education~~ principal of the school which the minor attends, a principal in the municipality in which the minor resides, or the commissioner of labor or the commissioner's agent or representative. ~~Any person, firm, or corporation employing minors under the age of sixteen years shall keep two complete lists of all minors employed. One such list must be kept on file by the employer and the other must be conspicuously posted near the principal entrance of the building in which any such minor is employed.~~

SECTION 3. AMENDMENT. Section 34-07-03 of the North Dakota Century Code is amended and reenacted as follows:

[3] **34-07-03. Question of age of minor employee - Who may raise - Duties of employer - Evidence required.** Any person, firm, or corporation employing ~~in any factory, workshop, or mercantile establishment~~ a minor who appears to be under the age of sixteen years and for whom an employment certificate is not filed as required by the provisions of this chapter, either shall furnish satisfactory evidence that such minor is ~~over~~ sixteen years of age or older or shall cease to employ such minor or to permit ~~him~~ the minor to work in such ~~factory, workshop, or mercantile establishment within ten days~~ employment immediately after a demand is made upon ~~him that he~~ the employer to do so by:

1. The ~~county superintendent of schools~~ principal of the school which the minor attends or a principal in the municipality in which the minor resides;

2. ~~The superintendent of schools of the municipality in which the child is employed or of which he is a resident;~~

3. ~~The business manager of the school board or the secretary of the board of education of the school district of which the child is a resident;~~

4. The commissioner of labor or ~~his~~ the commissioner's agent or representative; or

5. ~~Any member or representative of the county board of child welfare if such a board is maintained in the county in which such child is employed or resides;~~

6. ~~Any school attendant or truant officer; or~~

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[3] NOTE: Section 34-07-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~7.~~ 3. Any other officer charged with the enforcement of child labor, compulsory school attendance, or other child welfare laws.

The officer making such demand may require the same evidence, and only the same evidence, of age of the minor as is required on the issuance of an employment certificate under the provisions of this chapter.

SECTION 4. AMENDMENT. Section 34-07-05 of the North Dakota Century Code is amended and reenacted as follows:

[4] **34-07-05.** ~~**When employment certificate of minor required**~~ Who may issue certificates - Where certificates may be obtained. An employment certificate must be in writing and must be issued ~~only on the evidence of age prescribed in section 34-07-06 and may be issued by the superintendent of schools of the municipality in which the minor resides, if a superintendent is employed thereby, and if not, by the business manager of the school board or the secretary of the board of education of the school district in which the minor resides~~ by the minor's parent or guardian. The parent or guardian who certifies, or rejects, the employment certificate must file a completed copy with the department of labor, the employer, the principal of the school which the minor attends, or a principal in the municipality in which the minor resides, within ten days of certification or rejection. No employment certificate is required for any minor then in, or who is about to enter, ~~his~~ the minor's own employment or the employment of a firm or corporation of which ~~he~~ the minor is a member or officer. The commissioner of labor shall make the certificates of employment available.

SECTION 5. AMENDMENT. Section 34-07-06 of the North Dakota Century Code is amended and reenacted as follows:

34-07-06. Evidence of age of minor. The age of a minor who desires an employment certificate must be proved by:

1. A certificate of proof of birth issued by the state registrar of vital statistics;

2. ~~The baptismal certificate, or transcript of the record of baptism duly certified, showing the date of birth and the place of baptism of the child;~~

~~3.~~ ~~A bona fide contemporary record of the date of the child's birth comprising a part of the family record of births in the Bible, or other documentary~~ Documentary evidence satisfactory to the commissioner of labor, such as a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, a passport showing the age of the child, a valid driver's license, a baptismal certificate, or a life insurance policy. Such other satisfactory documentary evidence must have been in existence for at least one year, and in the case of a life insurance policy, for at least four years. ~~A school record, a parent's, guardian's, or custodian's~~

[4] NOTE: Section 34-07-05 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~affidavit, or any other written statement of age may not be accepted except as specified in subsection 4; or~~

~~4. A certificate signed by a public health physician or by a public school physician stating in his opinion the physical age of the minor. Such certificate must state the height and weight of the minor and any other evidence of physical age revealed by the physician's examination or upon which the opinion of the physician is based. A parent's, guardian's, or custodian's signed statement as to the age of a minor or a record of age as given on the register of the school first attended by the child or as reported in any school census, if obtainable, must be submitted with the physician's certificate showing physical age.~~

~~The person issuing the employment certificate for a minor shall require the evidence of age stated in subsection 1 in preference to that specified in any subsequent subsection, and may not accept the evidence of age permitted by any later subsection unless he receives and files evidence that the proof of age required by the preceding subsection or subsections cannot be obtained.~~

SECTION 6. AMENDMENT. Section 34-07-11 of the North Dakota Century Code is amended and reenacted as follows:

34-07-11. Requirements for certificate for school term but not during daily session - Truant or deficient minor not to be employed. A certificate permitting the employment of a minor during the school term, but not during the daily period of the school session, may be granted ~~upon compliance with the requirements for a vacation certificate~~ if such minor ~~is in actual, regular, and full-time attendance in any public, private, or parochial school as provided by law and~~ maintains a passing grade in all studies pursued by him in such school. No minor may be employed who at the time is guilty of truancy or of deficiency in ~~his~~ studies, as determined by the minor's parent or guardian, or the principal of the school which the minor attends, or a principal in the municipality in which the minor resides, or the commissioner of labor or the commissioner's agent or representative.

SECTION 7. AMENDMENT. Section 34-07-12 of the North Dakota Century Code is amended and reenacted as follows:

34-07-12. ~~Issuance and contents~~ Contents of employment certificate. ~~An employment certificate must be issued by the proper superintendent, principal, business manager, or secretary, as the case may be, upon receipt of a proper and complete application from or on behalf of a minor entitled to such certificate. It~~ The employment certificate must state the date and place of birth of the minor, the color of ~~his~~ the minor's hair and eyes, ~~his~~ the minor's height and weight, any distinguishing facial marks of such minor, ~~that the papers required by this chapter for the class of certificate issued have been duly examined, approved, and filed, and that the minor named in such certificate has appeared before and been examined by the officer signing the certificate~~ a description of the job duties and responsibilities of the minor, and must also be signed by the minor's parent or guardian and the employer.

SECTION 8. AMENDMENT. Section 34-07-14 of the North Dakota Century Code is amended and reenacted as follows:

34-07-14. Revocation of certificate - Notice - Return of revoked certificate. Whenever it appears to the ~~officer~~ minor's parent or guardian, or the principal of

the school which the minor attends, a principal in the municipality in which the minor resides, or the commissioner of labor or the commissioner's agent or representative who issued an employment certificate, or to ~~his~~ the person's successor, that such certificate has been improperly or illegally issued or that the physical or moral welfare of the minor would be best served by the revocation of the certificate, such ~~officer may revoke the certificate forthwith~~ certificate may be revoked. The revoking officer shall give notice of the revocation by registered or certified mail to the person employing such minor and to the minor holding the certificate. Immediately upon receiving notice of the revocation of the certificate the employer shall return the revoked certificate to the officer revoking the same and shall discontinue the employment of the minor. Revocation of a permit must be registered with the commissioner of labor or the commissioner's agent within ten days.

SECTION 9. AMENDMENT. Section 34-07-15 of the North Dakota Century Code is amended and reenacted as follows:

34-07-15. Maximum hours of labor of minors ~~under sixteen~~ fourteen or fifteen years of age - Notice to be posted. No minor ~~under the~~ fourteen or fifteen years of age ~~of sixteen years~~ may be employed or permitted to work at any occupation, except in domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that such hours are seven a.m. to nine p.m. from June first through labor day, nor more than ~~twenty-four~~ eighteen hours during school weeks, nor more than three hours on school days, nor more than ~~forty-eight~~ forty hours during nonschool weeks, nor more than eight hours on nonschool days. A school week is considered to be any week Monday through Sunday in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by the provisions of chapter 15-34.1. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of such notice must be furnished by the commissioner of labor. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

SECTION 10. AMENDMENT. Section 34-07-16 of the North Dakota Century Code is amended and reenacted as follows:

34-07-16. Prohibited employments and occupations of minors. No minor ~~under the~~ fourteen or fifteen years of age ~~of sixteen years~~ may be employed or permitted to work in:

1. Any employment involving the use of any power-driven machinery; but this prohibition does not apply to the use of (a) office machines, such as adding machines or typewriters; (b) tagging, pricing, or similar machines used in retail stores; (c) domestic-type machines used in food service operations, such as toasters, coffee grinders, milkshake blenders; ~~or~~ (d) machines used in service stations such as those in connection with car cleaning, washing, or polishing, or in the dispensing of gasoline or oil; provided, however, that no work may be done in connection with cars and trucks if such work involves the use of pits, racks, or lifting apparatus,

or involving the inflation of any tire mounted on a rim equipped with removable retaining ring; or (e) lawnmowers.

2. Construction work ~~of any kind~~ other than cleaning, errand running, moving, stacking, loading, or unloading materials by hand.

3. Lumbering or logging operations.

4. Sawmills or planing mills.

5. The manufacture, disposition, or use of explosives.

6. ~~Any capacity which requires the adjusting of any belt to any machinery or the oiling, wiping, or cleaning of any machinery.~~

~~7. Any employment which requires the operation, or the assisting in the operation, of any power-driven woodworking machinery or emery or polishing wheels used for polishing metal.~~

~~8. The operation of stamping machines in sheet metal and tinware manufacturing.~~

~~9. The operation of stamping machines in washer and nut factories operating corrugating rolls such as are used in roofing factories.~~

~~10.~~ The operation of any steam boiler, steam machinery, or other steam generating apparatus.

~~11. Repealed by S.L. 1975, ch. 299, § 2.~~

~~12. The operation or assisting in the operation of dough brakes or cracker machinery of any description.~~

~~13. The operation of wire or iron straightening machinery.~~

~~14. The operation or assisting in the operation of rolling mill machinery, punches, or shears, or washing, grinding, or mixing mills, or calendar rolls in rubber manufacture.~~

~~15.~~ 7. The operation or assisting in the operation of laundry machinery.

~~16.~~ 8. Preparing any composition in which dangerous or poisonous acids are used.

~~17.~~ 9. The manufacture of paints, colors, or white lead.

~~18.~~ 10. Operating or assisting in the operation of passenger or freight elevators.

~~19.~~ 11. Any mine or quarry.

~~20.~~ 12. The manufacture of goods for immoral purposes.

~~21.~~ 13. Any other employment not herein specifically enumerated that may be considered dangerous to ~~his~~ life or limb or in which ~~his~~ health may be injured or ~~his~~ morals depraved.

14. Occupations which involve working on an elevated surface, with or without use of safety equipment, including ladders and scaffolds in which the work is performed higher than six feet from the ground surface.

15. Security positions or any such occupations that require the use of a firearm or other weapon.

16. Door-to-door sales of any kind.

17. Occupations involving the loading, handling, mixing, applying, or working around or near any fertilizers, herbicides, fungicides, pesticides, insecticides, or any other chemicals, toxins, or heavy metals.

18. Occupations in or in connection with medical or other dangerous wastes.

19. Occupations which involve the handling or storage of blood, blood products, body fluids, and body tissues.

20. Cooking, baking, grilling, or frying.

21. Warehouse or storage work of any kind in which the main objective of the operation is distribution.

22. Trucking or commercial driving of any kind.

Nothing contained in this section prohibits a minor from doing ordinary farm labor or from operating farm machinery. No person ~~under sixteen~~ fourteen or fifteen years of age may be employed in any capacity if such employment compels the person to remain standing constantly. This section does not prevent the education of a minor in music nor the employment of a minor as a singer or musician in a church, school, or academy, or in any school or home talent exhibition given by the people of a local community.

SECTION 11. AMENDMENT. Section 34-07-17 of the North Dakota Century Code is amended and reenacted as follows:

34-07-17. Permit to work in theater or place of amusement. A minor under sixteen years of age may be employed to act or perform in a theater or place of amusement if a permit so to do is obtained from the ~~judge of the juvenile court or from the juvenile court commissioner of the judicial district in which the minor resides. Such permit must be granted if it appears to the satisfaction of such court or commissioner~~ minor's parent or guardian and the commissioner of labor or the commissioner's agent or representative, if such person decides that the appearance of such minor will not be detrimental to ~~his~~ the minor's morals, health, safety, welfare, or education.

SECTION 12. A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

Newspaper and shopper carrier exemption. The provisions of this chapter do not apply to newspaper or shopper carriers. This exemption applies to carriers engaged in making deliveries to subscribers' homes or to other newspaper or shopper consumers. It applies to carriers engaged in the street sale or delivery of newspapers or shoppers to the consumer, but it does not include persons engaged in hauling newspapers or shoppers to drop stations, distributing centers, newsstands, newsracks, vending machines, or similar locations or items.

SECTION 13. AMENDMENT. Section 34-07-18 of the North Dakota Century Code is amended and reenacted as follows:

34-07-18. Inspection of factories and establishments by peace officers - Report - Complaints. Peace officers may visit ~~mines, factories, workshops, and mercantile~~ any business establishments within their several jurisdictions to ascertain whether any minors are employed therein contrary to the provisions of this chapter. The peace officers shall report all cases of illegal employment to the commissioner of labor. Such officers may require that the employment certificates ~~and the lists~~ of employees which an employer is required to keep under the provisions of this chapter be produced for inspection. Complaints for offenses under this chapter may be made by any peace officer or by any other person cognizant of the facts.

SECTION 14. AMENDMENT. Section 34-07-19 of the North Dakota Century Code is amended and reenacted as follows:

34-07-19. Duties of commissioner of labor. The commissioner of labor shall prepare all ~~blanks~~ employment certificates necessary in the administration of this chapter, shall distribute such ~~blanks~~ employment certificates to the school officers, parents, guardians, and authorities of this state, shall exercise general supervision, interpretation, and exemption powers over the administration of the provisions of this chapter, and shall enforce the same. ~~He and his~~ The commissioner and the commissioner's agents and representatives have full power of visitation and inspection of all ~~factories, industries, and other~~ business establishments in which minors may be employed or permitted to work.

SECTION 15. AMENDMENT. Section 34-07-20 of the North Dakota Century Code is amended and reenacted as follows:

34-07-20. Commissioner may issue orders with reference to employment of minors. In addition to the powers vested in the commissioner of labor by the provisions of chapter 34-06, ~~he~~ the commissioner may issue general and special orders with reference to the employment of minors and may prohibit or exempt the employment of minors in any employment or place of employment which is dangerous or prejudicial to the life, health, safety, or welfare of such minors. Any such regulation or order is in addition to the regulations specified in this chapter.

SECTION 16. REPEAL. Sections 34-07-07, 34-07-08, 34-07-10, and 34-07-13 of the North Dakota Century Code are repealed.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 352

SENATE BILL NO. 2492
(Senators Tallackson, Heinrich)
(Representatives Gorder, Kilichowski)

EMPLOYEE REPRESENTATION AT GRIEVANCE PROCEEDING

AN ACT to create and enact a new section to chapter 34-11.1 of the North Dakota Century Code, relating to a public employee's right to representation during grievance proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-11.1 of the North Dakota Century Code is created and enacted as follows:

Employee representation at grievance proceeding. An employee who is a party to a work-related grievance proceeding may be accompanied, advised, and represented throughout the proceeding by another employee or by a representative chosen by the employee involved in the proceeding.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 353

SENATE BILL NO. 2096
(Industry, Business and Labor Committee)
(At the request of the Department of Labor)

EMPLOYER WITHHOLDING FROM EMPLOYEE WAGES

AN ACT to amend and reenact section 34-14-04.1 of the North Dakota Century Code, relating to withholding by an employer of advances paid to an employee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-04.1 of the North Dakota Century Code is amended and reenacted as follows:

34-14-04.1. Limitations on withholdings. Every employer shall withhold from the compensation due ~~his~~ employees those amounts which are required by state or federal law to be withheld and may deduct advances paid to employees, other than undocumented cash, and other individual items authorized in writing by the employees.

Approved April 19, 1993
Filed April 20, 1993

LIENS

CHAPTER 354

SENATE BILL NO. 2464
(Senators Mathern, Marks)

FUTURE ADVANCE LIEN PRIORITY

AN ACT to amend and reenact section 35-01-05.2 of the North Dakota Century Code, relating to the priority of liens securing future advances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-01-05.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-01-05.2. Priority of liens securing future advances. A lien document relating to a real estate transaction and containing a written provision securing the repayment of future advances, whether or not the lien creditor is obligated to make such future advances, has priority over all subsequent encumbrances to the extent of all sums advanced, with interest thereon, with the same effect as if the entire sum had been advanced at the time of the creation of the lien.

Approved March 23, 1993
Filed March 23, 1993

LIVESTOCK

CHAPTER 355

HOUSE BILL NO. 1297
(Representatives A. Olson, Allmaras)
(Senator Marks)

NONTRADITIONAL LIVESTOCK

AN ACT to amend and reenact sections 36-01-00.1, 36-01-08, 36-01-12, 36-01-13, 36-01-14, 36-01-17, and 36-01-19 of the North Dakota Century Code, relating to nontraditional livestock.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-00.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-00.1. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. ~~"Captive wildlife"~~ "Board" means the state board of animal health.

2. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, llama, alpaca, or swine.

3. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.

~~2. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, or swine.~~

SECTION 2. AMENDMENT. Section 36-01-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **36-01-08. Duties of board - Rules.** The ~~state~~ board ~~of animal health~~ shall protect the health of the domestic animals and ~~captive wildlife~~ nontraditional livestock of this state ~~and~~, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and ~~captive wildlife~~ nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. The board may make rules for the conduct of its business and to carry into effect the purposes of this chapter and other duties prescribed in this title. ~~The rules of the state board of animal health must be adopted in accordance with chapter 28-32.~~

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[1] NOTE: Section 36-01-08 was also amended by section 2 of House Bill No. 1008, chapter 8.

SECTION 3. AMENDMENT. Section 36-01-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-12. Powers of board over contagious and infectious diseases. The ~~state~~ board ~~of animal health~~ may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious diseases among any of the domestic animals and ~~captive wildlife~~ nontraditional livestock of this state. For this purpose, the board may quarantine any domestic animal or ~~captive wildlife~~ nontraditional livestock which is infected, or may be infected, with any such disease or which has been exposed, or may be exposed, to infection, cause any animal so infected to be killed, regulate or prohibit the arrival in or departure from this state of any such exposed or infected animal, and at the cost of the owner thereof, it may detain any domestic animal or ~~captive wildlife~~ nontraditional livestock found to be in violation of any such regulation or prohibition. The board may also quarantine any city, civil township, or county or areas within a county in this state and any enclosure, building, or any domestic animal or ~~captive wildlife~~ nontraditional livestock therein which is or may be infected or exposed or may be exposed to any contagious or infectious disease.

SECTION 4. AMENDMENT. Section 36-01-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-13. Diseased animal to be reported to board. Any person who discovers, suspects, or has reason to believe that any domestic animal or ~~captive wildlife~~ nontraditional livestock belonging to that person or belonging to any other person, is affected by any contagious disease, shall report such knowledge, suspicion, or belief to:

1. The ~~state~~ board ~~of animal health~~ or any member of the board;
2. The state veterinarian or any other agent or representative of the ~~state~~ board ~~of animal health~~; or
3. Any law enforcement officer of the county or city in which the animal is present. If a report is made to a law enforcement officer under this subsection, the officer shall report the facts immediately to the ~~state~~ board ~~of animal health~~, the state veterinarian, or another agent or representative of the ~~state~~ board ~~of animal health~~ and failure to do so constitutes a violation of ~~the provisions of~~ this chapter.

SECTION 5. AMENDMENT. Section 36-01-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal or ~~captive wildlife~~ nontraditional livestock has been determined to be affected with a contagious or infectious disease and has been ordered killed by the ~~state~~ board ~~of animal health~~, the state veterinarian, or an agent or representative of the ~~state~~ board ~~of animal health~~, the owner or keeper of the animal must be notified of the order. Notice may be accomplished by sending, by registered ~~or certified~~ mail, a copy of the order to the owner or keeper of the animal, or by having an agent or representative of the board, or a law enforcement officer, serve a copy of the order upon the owner or keeper of the animal. Within twenty-four hours after receiving notice of the order, the owner or keeper may file a protest against the killing of the animal with the board or with the person who has ordered the animal killed. The

protest must state under oath, that to the best of the knowledge and belief of the person making the protest, the animal is not infected with any contagious or infectious disease. An examination of the animal involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All the experts must be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

SECTION 6. AMENDMENT. Section 36-01-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-17. Oaths and examinations. The ~~state~~ board ~~of animal health~~, any member of the board, the state veterinarian, or any authorized agent or representative of the board may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals or ~~captive wildlife~~ nontraditional livestock. For this purpose, the board, members of the board, the state veterinarian, and any authorized agent or representative of the board ~~shall have the power to~~ may take depositions, ~~to~~ compel witnesses to attend and testify, and ~~to~~ administer oaths. Such witnesses ~~shall~~ are entitled to receive the same fees for attendance and travel as witnesses before the district courts~~, and~~. The board shall pay the fees ~~must be paid by the board~~ from moneys appropriated to it.

SECTION 7. AMENDMENT. Section 36-01-19 of the 1992 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-19. Emergency fund in case of epizootic. In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals or ~~captive wildlife~~ nontraditional livestock, which cannot be controlled with the funds at the disposal of the ~~state~~ board ~~of animal health~~, the board shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission, and such commission may authorize money to be drawn from the state treasury to meet the emergency.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 356

SENATE BILL NO. 2088
(Agriculture Committee)
(At the request of the Board of Animal Health)

CAPTIVE WILDLIFE LICENSES

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to captive wildlife license fees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Captive wildlife license - Fee. The board of animal health may require a license for captive wildlife maintained within this state. The annual fee for a license for a bird species required to be licensed is five dollars. The maximum annual fees for bird species licenses to be paid by a person holding more than one bird species license is twenty-five dollars. The annual fee for a license for any other species required to be licensed is ten dollars. The maximum annual fees for nonbird species licenses to be paid by a person holding more than one nonbird species license is seventy-five dollars.

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

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 357

SENATE BILL NO. 2245
(Senators Solberg, Langley, Bowman)
(Representatives Bateman, Rennerfeldt, Hokana)

BRAND INSPECTION AND RECORDING

AN ACT to amend and reenact sections 36-09-01, 36-09-02, 36-09-02.1, 36-09-04, 36-09-06, 36-09-08, 36-09-10, 36-09-11, 36-09-12, 36-09-13, 36-09-14, 36-09-15, and 36-09-18 of the North Dakota Century Code, relating to livestock brands and marks; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-01 of the North Dakota Century Code is amended and reenacted as follows:

36-09-01. Office for recording brands. ~~A~~ The North Dakota stockmen's association shall appoint a chief brand inspector. The chief brand inspector shall maintain a general office for recording marks and brands ~~must be maintained in the office of the commissioner of agriculture~~. As used in this chapter, "chief brand inspector" means the chief brand inspector of the North Dakota stockmen's association.

SECTION 2. AMENDMENT. Section 36-09-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-02. Application for exclusive use of brand or mark. Any person desiring the exclusive use of any mark or brand shall file with the ~~commissioner of agriculture~~ chief brand inspector an application:

1. Setting forth a description of the mark or brand of which he desires the exclusive use and a facsimile thereof;

2. Stating the kind or kinds of livestock upon which the mark or brand is to be used; and

3. Indicating clearly the place or position upon each kind of livestock where such brand is to be placed, except that the hips of any cattle may not be used for registered numerical brands. Nonregistered numerical brands may be located upon the hips of cattle for individual identification. Registered brands other than numerical brands may also be located on the hips of cattle. Numerical brand means a brand consisting entirely of upright number or numbers, and does not include brands consisting of lazy numbers, or combinations of letters, or characters and numbers. The provisions of this chapter do not apply to any numerical brand recorded prior to July 1, 1957.

SECTION 3. AMENDMENT. Section 36-09-02.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-02.1. Standards for recording brands or marks. The ~~commissioner~~ chief brand inspector shall record the brand or mark described in the application except that the ~~commissioner~~ chief brand inspector shall refuse to record any brand or mark:

1. That has been previously recorded in favor of another person or one that is deceptively similar to any previously recorded livestock brand or mark. The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.

2. That contains less than two characters, except that a single character brand may be recorded for sheep and goats, or one that contains any of the following characters:

   a. The letters "g" or "q" or letters that are not in the gothic style.

   b. The Arabic numerals "o" or "1" or any non-Arabic numerals.

   c. Any symbols other than permissible symbols. Permissible symbols are limited to the following: diamond, half-diamond, arrow, mill iron, cross, heart, box, triangle, quarter circle, bar, or star.

3. That involves any letters, numerals, or symbols within another letter, numeral, or symbol.

4. That is illegible when placed on the livestock.

5. That indicates placement upon each kind of livestock in other than a permissible location. Permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses and mules are the left and right jaw, the left and right shoulder, and the left and right hip. Permissible locations for buffalo are the left and right rib, and the left and right hip. The permissible locations for other types of livestock must be established by the ~~commissioner~~ chief brand inspector as necessary. The determination of permissible locations under this section may not be considered as a rule under chapter 28-32.

Notwithstanding any provisions of this section to the contrary, the ~~commissioner~~ chief brand inspector shall accept for rerecording under section 36-09-09 any previously recorded livestock brand or mark.

SECTION 4. AMENDMENT. Section 36-09-04 of the North Dakota Century Code is amended and reenacted as follows:

36-09-04. Record of brands kept - Inspection of record - Certificate of ownership of brand. The ~~commissioner of agriculture~~ chief brand inspector shall keep a record of all marks and brands showing the names and residences of the persons owning the marks and brands, a description and facsimile of each mark or brand, and in the case of livestock, the range occupied by the livestock, as nearly as may be determined. The record is open to the inspection of any person interested therein. The ~~commissioner~~ chief brand inspector shall deliver to the owner of each mark or brand a certificate thereof, and the certificate is evidence of ownership of the mark or brand described therein.

SECTION 5. AMENDMENT. Section 36-09-06 of the North Dakota Century Code is amended and reenacted as follows:

36-09-06. Cancellation of brand ~~by commissioner of agriculture~~. The ~~commissioner of agriculture~~ chief brand inspector shall cancel a legally recorded brand only when ~~he~~ the chief brand inspector receives for filing a bill of sale of such brand properly executed by the record owner as shown by the records in ~~his~~ the chief brand inspector's office or in instances where it is found that a brand has been issued inadvertently in duplication of a previously recorded brand.

SECTION 6. AMENDMENT. Section 36-09-08 of the North Dakota Century Code is amended and reenacted as follows:

36-09-08. Official brand books ~~prepared by department of agriculture~~ to be presumptive evidence. Any official brand book published by the ~~commissioner of agriculture~~ chief brand inspector must be received in all courts of this ~~S~~state as presumptive evidence of the recording and ownership of livestock brands therein described.

SECTION 7. AMENDMENT. Section 36-09-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-10. Brands to be rerecorded every ten years. Failure to rerecord any previously recorded livestock brand or mark on or before the time specified, in accordance with ~~the provisions of~~ this chapter, is deemed an absolute abandonment ~~to the state of North Dakota~~ of ~~such~~ the previously recorded livestock brand or mark. Thereafter the ~~commissioner of agriculture~~ chief brand inspector shall accept any regular application for the issuance to anyone of ~~such~~ the abandoned livestock brand or mark, provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1. The ~~commissioner~~ chief brand inspector shall issue a certificate for the use of ~~such~~ the abandoned brand or mark within this state, except that ~~such~~ the brand or mark may not be issued if it consists of a single figure or single letter.

SECTION 8. AMENDMENT. Section 36-09-11 of the North Dakota Century Code is amended and reenacted as follows:

36-09-11. Notice of expiration of brand to be given. The ~~commissioner of agriculture~~ chief brand inspector, on or before the beginning of the fourth month prior to the cancellation of all brands, shall notify each and every record owner of a livestock brand or mark of the final date set for cancellation thereof and also of ~~his~~ the owner's prior right to rerecord such previously recorded livestock brand or mark. ~~Such~~ The notice must be given in writing, legibly written, sent by ordinary first-class mail, addressed to the record owner at the address as shown upon the present records.

SECTION 9. AMENDMENT. Section 36-09-12 of the North Dakota Century Code is amended and reenacted as follows:

36-09-12. Publication of notice. The ~~commissioner of agriculture~~ chief brand inspector shall publish in each official newspaper in each county where brands or marks are in use, a notice of the expiration of the time fixed by law for the rerecording of livestock brands or marks, and the prior right of any record owner to rerecord ~~his~~ the owner's previously recorded brands or marks. ~~Such~~ The publication must begin on or about the first of September, prior to the cancellation of all

brands, and ~~such~~ the publication must continue at least three successive times in each of such newspapers. The ~~commissioner~~ chief brand inspector also shall request each newspaper publishing ~~such~~ the notice to call attention to the provisions of this chapter in a news item in the regular columns of ~~said~~ the newspaper, for which no charge is allowed.

SECTION 10. AMENDMENT. Section 36-09-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-13. Recording and rerecording of brands - Fee. The rerecording of abandoned livestock brands or marks, and the recording of new brands and marks, must conform in all respects to this chapter. Each application for recording and rerecording must be accompanied by a fee ~~of fifteen dollars~~ for each place or position upon each type of livestock where the brand or mark is to be placed. The fee must be set by the board of animal health, upon the recommendation of the North Dakota stockmen's association, and may not exceed fifteen dollars.

SECTION 11. AMENDMENT. Section 36-09-14 of the North Dakota Century Code is amended and reenacted as follows:

36-09-14. ~~Commissioner of agriculture~~ Chief brand inspector to issue brandbook. The ~~commissioner of agriculture~~ chief brand inspector shall compile and issue a brandbook from the records of livestock brands in ~~his~~ the chief brand inspector's office as of the final date for rerecording, and a copy of the brandbook must be delivered free of charge to every brand inspector and upon written request from other law enforcement officers of the state ~~of North Dakota~~. Annually thereafter the ~~commissioner~~ chief brand inspector shall prepare a supplement of brands registered during the year and shall distribute the supplement free of charge to every brand inspector and upon written request from other law enforcement officers of the state of North Dakota. Brandbooks and supplements must also be sold to all interested persons at the general office for recording marks and brands maintained in the office of the ~~commissioner of agriculture~~ chief brand inspector at a price ~~of fifteen dollars per brandbook including supplement~~ set by the North Dakota stockmen's association and approved by the board of animal health.

SECTION 12. AMENDMENT. Section 36-09-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-15. Butcher to keep record of branded cattle slaughtered - Penalty. Any person engaged in the business of killing domestic animals and selling the meat of those animals at retail or wholesale, or who slaughters animals on a custom basis, is deemed a butcher for the purposes of this section. Any butcher who kills any head of neat cattle shall keep a record showing all of the following:

1. The name and place of residence of the person from whom such animal was purchased or for whom any custom slaughtering is performed.
2. When and where such animal was purchased or from where the animal came.
3. The sex of such animal and its age to the best of his knowledge.
4. A description of any and all marks and brands on the animal.

The record is open to inspection during business hours by a representative of the ~~board of animal health~~ North Dakota stockmen's association. Any person who violates ~~any of the provisions of~~ this section is guilty of an infraction.

SECTION 13. AMENDMENT. Section 36-09-18 of the North Dakota Century Code is amended and reenacted as follows:

36-09-18. Performance bond - **Disposition of fees ~~collected by commissioner of agriculture~~** - Continuing appropriation - Discrimination prohibited. ~~All~~ The North Dakota stockmen's association shall file with the secretary of state a performance bond in the amount of forty thousand dollars, payable to the state of North Dakota and conditioned upon the faithful performance of the requirements of this chapter. Any fees collected ~~by the commissioner of agriculture~~ under ~~the provisions of~~ this chapter must be ~~turned over monthly to the state treasurer~~ deposited in the general fund of the North Dakota stockmen's association. The fees deposited under this chapter and section 36-22-03 are appropriated as a continuing appropriation to the North Dakota stockmen's association. The North Dakota stockmen's association may not discriminate between or among members of the association and persons who are not members of the association with respect to fees, recordings, complaints, requests for assistance, and any other services to be provided under this chapter.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 358

HOUSE BILL NO. 1091
(Agriculture Committee)
(At the request of the State Board of Animal Health)

BRUCELLOSIS VACCINATION

AN ACT to amend and reenact section 36-15-21 of the North Dakota Century Code, relating to calfhood vaccination against brucellosis; to repeal section 36-14-02 of the North Dakota Century Code, relating to the killing of an infected animal for human consumption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-15-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-21. Calfhood vaccination against brucellosis required - Penalty. No person may bring into this state any female cattle over the maximum vaccination age as prescribed in the brucellosis eradication uniform methods and rules approved and published by the United States department of agriculture, animal and plant health inspection service, for dairy or breeding purposes within this state, that have not been officially calfhood vaccinated against brucellosis. Female cattle originating from free states that do not require North Dakota-origin female cattle to be calfhood brucellosis vaccinated are exempt from the requirements of this section. A person who brings cattle into this state from other free states that reciprocate shall prove that the cattle were located in that state for a period of at least sixty days. "Officially calfhood vaccinated" means a bovine female animal vaccinated against brucellosis under the supervision of a federal or state veterinary official within age limits prescribed by the board ~~of animal health~~ in compliance with United States department of agriculture uniform methods and rules, with a vaccine approved by the North Dakota state veterinarian, and permanently identified as such a vaccinate and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis. However, the board ~~in its discretion~~ may grant ~~a hearing to any person under the rules adopted by the board, as to whether or not~~ an exception ~~should be made~~ to the provisions of this section. An appeal may be taken from the decision of the board under the provisions of chapter 28-32. Any person who brings into this state or acquires within this state any cattle contrary to the provisions of this section, is guilty of a class A misdemeanor.

SECTION 2. REPEAL. Section 36-14-02 of the 1991 Supplement to the North Dakota Century Code is repealed.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on August 1, 1994.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 359

SENATE BILL NO. 2510
(Senator Heinrich)

HUMANE TREATMENT OF WILD ANIMALS

AN ACT to amend and reenact section 36-21.1-07 of the North Dakota Century Code, relating to the inhumane treatment of wild animals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.1-07 of the North Dakota Century Code is amended and reenacted as follows:

36-21.1-07. Cockfights, dogfights, and other exhibitions prohibited - Penalties.

1. No person may engage in or be employed at cockfighting, dogfighting, bearbaiting, pitting one animal against another, or any other similar cruelty, such as bear fighting, kangaroo boxing, or similar activity, to animals; nor may he receive money for the admission of any person to any place used, or about to be used, for any such purpose, nor may he willfully permit anyone to enter or use, for any such purpose, premises of which he is the owner, agent, or occupant; nor may he use, train, or possess a dog or other animal for the purpose of maltreating any domestic animal. Any person who violates ~~any of the provisions of~~ this subsection is guilty of a class C felony.

2. No person may knowingly purchase a ticket of admission to, be present at, or witness the activities prohibited by subsection 1. Any person who violates ~~any of the provisions of~~ this subsection is guilty of a class A misdemeanor.

Approved March 10, 1993
Filed March 11, 1993

MILITARY

CHAPTER 360

SENATE BILL NO. 2168
(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

VETERANS' CEMETERY FUNDS

AN ACT to amend and reenact section 37-03-14 of the North Dakota Century Code, relating to the veterans' cemetery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-03-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **37-03-14. North Dakota veterans' cemetery - Administration.** The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort Abraham Lincoln state park. The adjutant general may accept and ~~utilize~~ expend private and federal funds to establish and operate the veterans' cemetery. All moneys received from private or federal sources must be paid to the state treasurer for deposit into ~~a~~ the veterans' cemetery maintenance fund. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the parks and outdoor recreation sites division for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard, other reserve components, and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

Approved March 10, 1993
Filed March 11, 1993

[1] NOTE: Section 37-03-14 was also amended by section 6 of House Bill No. 1400, chapter 80.

CHAPTER 361

SENATE BILL NO. 2092
(Government and Veterans Affairs Committee)
(At the request of the Administrative Committee on Veterans' Affairs)

VETERANS' HOME OBJECT AND FUNDING

AN ACT to amend and reenact sections 37-15-02, 37-15-14, 37-15-14.1, and 37-15-21 of the North Dakota Century Code, relating to the operation of the veterans' home; and to repeal section 37-15-00.1 of the North Dakota Century Code, relating to the definition of domiciliary care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-15-02. Object of veterans' home. The object of the veterans' home is to provide ~~domiciliary~~ basic care as defined under chapter 23-09.3 and long-term care as defined under chapter 23-16 for:

1. All veterans as defined in section 37-01-40 and all honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty.

2. The spouses and surviving spouses of those mentioned in subsection 1 if they meet the requirements for admission under section 37-15-10.

SECTION 2. AMENDMENT. Section 37-15-14 of the North Dakota Century Code is amended and reenacted as follows:

37-15-14. Veterans' home operating fund - Moneys for the maintenance of the veterans' home to be deposited with state treasurer. A special fund, to be known as the veterans' home operating fund, must be maintained in the state treasury. Moneys arising from the interest received on money derived from the sale of lands appropriated for the support of the home and from the rental of such lands, moneys received from the United States for the support and maintenance of the home, and all other moneys, income, and collections of public funds arising from any other source or endeavor of the home, except as provided for in section 37-15-21, must be placed in the veterans' home operating fund for the use and maintenance of the veterans' home. Moneys derived from the general fund appropriation made by the legislative assembly must be transferred periodically to the veterans' home operating fund upon order of the director of the office of management and budget whenever the operating fund's balance requires supplementation.

SECTION 3. AMENDMENT. Section 37-15-14.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-15-14.1. Membership contribution for residents of veterans' home - Creation of special fund.

1. The administrative committee on veterans' affairs may establish a membership contribution to be paid by members of the veterans' home. The fee must be based on the adjusted income of each member, but in no case may it exceed forty-nine percent of the average daily per-member cost. The membership contribution must be set under a formula determined by the administrative committee and designed to assure dignity and equity in the charge. The administrative committee may, from time to time, reconsider its action establishing a membership contribution, amend or rescind the contribution charge, or reinstate a contribution charge previously rescinded. The commandant shall collect monthly any membership contribution levied.

2. As used in subsection 1, "adjusted income" means all moneys received from any source, including social security benefits, less amounts received or expended as follows:

   a. ~~Moneys earned by a member through labor performed for the veterans' home.~~

   ~~b.~~ Moneys received as service-connected compensation.

   ~~c.~~ b. Moneys earned during authorized leaves or furloughs from the veterans' home.

   ~~d.~~ c. Moneys expended by the member for hospitalization due to illness or injury.

   ~~e.~~ d. Moneys expended by the member for other medical care or treatment, or for required medicines.

   ~~f.~~ e. Such other receipts or expenditures as the administrative committee may permit to be deducted in individual cases.

3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in a special fund in the state treasury to be known as the "veterans' home improvement fund". The fund must be invested by the state investment board in the manner provided in chapter 21-10, and all income received, less amounts deducted pursuant to section 21-10-10, must be deposited in, or reinvested for the benefit of, the veterans' home improvement fund. Moneys in the veterans' home improvement fund must, subject to and following legislative appropriations, be expended only for expansion of present facilities of the home, for development of new facilities, for enrichment of living conditions, or for additional care for members of the home, as such expansion, development, enrichment, or additional care is deemed necessary by the administrative committee. The office of management and budget shall prepare the warrant-checks.

SECTION 4. AMENDMENT. Section 37-15-21 of the North Dakota Century Code is amended and reenacted as follows:

37-15-21. Commandant may accept gifts, donations, or bequests. The commandant for and in behalf of the veterans' home is hereby authorized to accept ~~or receive any~~ and expend funds from any source, including federal or private sources, interest earnings from the veterans' postwar trust fund, and donations, gifts, or bequests offered or tendered to, or for the benefit of the veterans' home to be used to benefit the veterans' home as authorized by the administrative committee on veterans' affairs with the approval of the emergency commission. All such moneys received or accepted must be used for the specific purposes for which they were given or donated. This authority shall apply and be retroactive to any or all gifts, donations, or bequests heretofore tendered, offered, or made. The veterans' home may establish and maintain its own local fund to administer moneys received under this section. All interest, rent, or income from moneys or property received under this section must be deposited in the veterans' home improvement fund unless by the terms of acquisition, the moneys are required to be maintained in a different manner.

SECTION 5. REPEAL. Section 37-15-00.1 of the North Dakota Century Code is repealed.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 362

HOUSE BILL NO. 1178
(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

NATIONAL GUARD COMPACT

AN ACT providing for the adoption of an interstate agreement titled "The National Guard Mutual Assistance Counter-Drug Activities Compact" and for its implementation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Ratification of compact. The National Guard Mutual Assistance Counter-Drug Activities Compact is hereby enacted into law and entered into by this state, with all other states legally joining therein, in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I - PURPOSE

The purposes of this compact are to:

1. Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.

2. Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.

3. Permit the national guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of national guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.

4. Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

5. Maximize the effectiveness of the national guard in those situations which call for its utilization under this compact.

6. Provide protection for the rights of national guard personnel when performing duty in other states in counter-drug activities.

7. Ensure uniformity of state laws in the area of national guard involvement in interstate counter-drug activities by incorporating said uniform laws within the compact.

ARTICLE II - ENTRY INTO FORCE AND WITHDRAWAL

1. This compact enters into force when enacted into law by any two states. Thereafter, this compact becomes effective as to any other state upon its enactment thereof.

2. Any party state may withdraw from this compact by enacting a statute repealing the same.

ARTICLE III - MUTUAL ASSISTANCE AND SUPPORT

1. As used in this article:

   a. "Demand reduction" means providing available national guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions, and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

   b. "Drug interdiction and counter-drug activities" means the use of national guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities are restricted to:

      (1) Providing information obtained during either the normal course of military training operations or during counter-drug activities, to federal, state, or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

      (2) Making available any equipment including associated supplies or spare parts, base facilities, or research facilities of the national guard to any federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

      (3) Providing available national guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

      (4) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

      (5) Operation and maintenance of equipment and facilities of the national guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;

(6) Providing available national guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;

(7) Providing available national guard personnel, equipment, and support for administrative, interpretive, or analytic purposes;

(8) Providing available national guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. 801 et seq. or otherwise by law, in accordance with other applicable law.

c. "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

d. "Mutual assistance and support agreement" or "agreement" means an agreement between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and the national guard of one or more other states, consistent with the purposes of this compact.

e. "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

f. "Party state" refers to a state that has lawfully enacted this compact.

g. "Requesting state" means that state whose governor requested assistance in the area of counter-drug activities.

h. "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.

i. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

2. Upon the request of a governor of a party state for assistance in the area of drug interdiction, counter-drug, and demand reduction activities, the governor of a responding state has authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the national guard forces of his

or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard is conclusive.

3. The governor of a party state, within his or her discretion, may withhold the national guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

4. The national guard of this state is hereby authorized to engage in counter-drug activities and demand reduction.

5. The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the national guard of one or more other party states to provide personnel, assets, and services in the area of counter-drug activities, and demand reduction provided that all parties to the agreement are not specifically prohibited by law to perform said activities.

6. The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

   a. Its duration;

   b. The organization, composition, and nature of any separate legal entity created thereby;

   c. The purpose of the agreement;

   d. The manner of financing the agreement and establishing and maintaining its budget;

   e. The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

   f. Provision for administering the agreement, which may include creation of a joint board responsible for such administration;

   g. The matter of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;

   h. The minimum standard for national guard personnel implementing the provisions of the agreement;

   i. The minimum insurance required of each party to the agreement, if necessary;

   j. The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;

   k. The duties and authority that the national guard personnel of each party state may exercise; and

   l. Any other necessary and proper matters.

Agreements prepared under the provisions of this statute are exempt from any state law pertaining to intergovernmental agreements except an agreement with a tribal government.

7. As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the attorney general of North Dakota. The attorney general may delegate in writing approval authority to an assistant attorney general or a North Dakota national guard judge advocate.

   a. The attorney general, or the attorney general's designee, shall approve an agreement submitted under this part unless he or she finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of North Dakota. If the attorney general or the attorney general's designee disapproves an agreement, he or she shall provide a written explanation to the adjutant general.

   b. If the attorney general or the attorney general's designee does not disapprove an agreement within thirty days after its submission, it is considered approved by the attorney general.

8. Whenever national guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug, and demand reduction activities, pursuant to orders, section 37-01-12 applies.

ARTICLE IV - RESPONSIBILITIES

1. Nothing in this compact may be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for national guard personnel performing duty pursuant to title 32 of the United States Code nor may anything in this compact be construed as a waiver of coverage provided for under the Federal Torts Claims Act. In the event that national guard personnel performing counter-drug activities do not receive rights, benefits, privileges, and immunities otherwise provided for national guard personnel as stated above, the following provisions apply:

   a. Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions which occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the requesting state or are attached to the requesting state for the purposes of operational control.

   b. Subject to the provisions of subdivisions c, d, and e, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for

assistance or support must be assumed and borne by the requesting state.

c. Any responding state rendering aid or assistance pursuant to this compact must be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of national guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

d. Unless there is a written agreement to the contrary, each party shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

e. Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state, shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation must be deemed items of expense reimbursable pursuant to subdivision c.

2. Officers and enlisted personnel of the national guard performing duties subject to proper orders pursuant to this compact are subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any national guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and said home state is responsible for any disciplinary action to be taken. However, nothing in this section abrogates the general criminal jurisdiction of the state in which the offense occurred.

ARTICLE V - DELEGATION

Nothing in this compact may be construed to prevent the governor of a party state from delegating any of the governor's responsibilities or authority respecting the national guard; provided, that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor, may not delegate the power to request assistance from another state.

ARTICLE VI - LIMITATIONS

Nothing in the compact:

1. Authorizes or permits national guard units or personnel to be placed under the operational control of any person not having the national guard rank or status required by law for the command in question.

2. Deprives a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the national guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

SECTION 2. Authorization to implement compact. The governor and adjutant general are authorized to enter appropriate agreements and participate in drug interdiction and counter-drug activities pursuant to section 1 of this Act.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 363

SENATE BILL NO. 2520
(Senators B. Stenehjem, Graba)
(Representatives Gates, Keiser)

VETERANS' EMPLOYMENT PREFERENCE

AN ACT to amend and reenact subsection 4 of section 37-19.1-02 of the North Dakota Century Code, relating to the veterans' employment preference; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 37-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies or governmental agencies, as defined herein, which now have, or which may hereafter have, an established personnel system ~~under which it maintains a register of persons eligible for employment and from which it certifies a prescribed number of names to that particular agency or governmental agency, must be~~ are governed by the following:

   a. No distinction or discrimination may be made in the administration of the examination because the applicant may be a veteran.

   b. Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.

   c. The applicant must be required to furnish proof of ~~his~~ the applicant's status as a veteran and, if disabled, proof of ~~his~~ the applicant's disability, as defined herein.

   d. Upon receipt of proof required in subdivision c, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant, and the total is the veteran's examination grade.

   e. Upon request for the prescribed number of eligible persons from the eligibility registry, such number of eligible persons must be certified from the top number of eligible persons and with such certified list of eligible persons there must also be submitted a statement as to which of those so certified are veterans, disabled veterans, or nonveterans.

   f. In the event the certified list of eligible persons includes either veterans or disabled veterans, the appointing or employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:

(1) A disabled veteran, without regard to ~~his~~ the disabled veteran's examination grade, is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making such selection, must be so appointed or employed. If such list includes two or more disabled veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making such selection, must be so appointed or employed.

(2) When such certified list of eligible persons does not include one or more disabled veterans and consists only of veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, must be so appointed or employed.

(3) When such certified list of eligible persons includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be so appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making such appointment or employment.

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

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 364

SENATE BILL NO. 2119
(Government and Veterans Affairs Committee)
(At the request of the Department of Veterans' Affairs)

VIETNAM VETERANS' PROGRAMS REPEAL

AN ACT to repeal chapters 37-24, 37-25, and 54-17.1 of the North Dakota Century Code, relating to Vietnam veterans' educational assistance, Vietnam conflict veterans' adjusted compensation, and Vietnam veterans' bonus bond issue.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapters 37-24, 37-25, and 54-17.1 of the North Dakota Century Code are repealed.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 365

HOUSE BILL NO. 1101
(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

PERSIAN GULF WAR COMPENSATION

AN ACT to amend and reenact subsection 6 of section 37-26-01 of the North Dakota Century Code, relating to the definition of "period of service" for adjusted compensation paid to national guard and reserve veterans of the Persian Gulf War.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 37-26-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Period of service" means the period of time beginning August 2, 1990, and ending ~~on a date prescribed by the president or the Congress for the cessation of hostilities in the Persian Gulf~~ June 30, 1993.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 366

HOUSE BILL NO. 1389
(Representatives Belter, Gerntholz, Hokana)
(Senators Nelson, Wogsland, Dotzenrod)

VETERANS' ADJUSTED COMPENSATION

AN ACT to provide for adjusted compensation to certain veterans of the Persian Gulf War, Grenada, Lebanon, and Panama armed conflicts and for the method of filing and payment of claims, duties of the adjutant general, and exemption from taxation and execution for the payments; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
   a. The surviving unremarried spouse as of the date of signing the application;
   b. The surviving child or children and the lawful issue of a deceased child or children by representation;
   c. The surviving person standing in loco parentis; or
   d. The surviving parent or parents.
3. "Honorable and faithful" means service evidenced by:
   a. An honorable discharge, or its equivalent;
   b. In the case of an officer, a certificate of service; and
   c. In the case of a veteran who has not been discharged, a certificate from appropriate service authority that the veteran's service was honorable and faithful.
4. "Period of service" means:
   a. For the Persian Gulf War, the period of time beginning August 2, 1990, and ending June 30, 1993;
   b. For the Grenada armed conflict, the period of time beginning October 23, 1983, and ending November 21, 1983;
   c. For the Lebanon armed conflict, the period of time beginning June 1, 1983, and ending August 1, 1984; or

d. For the Panama armed conflict, the period of time beginning December 20, 1989, and ending January 30, 1990.

5. "Qualifying service" means service by a veteran during a period of service anywhere in a theatre or area of armed conflict as evidenced by award of an armed forces expeditionary medal or other campaign service medal.

6. "Resident" means a person who has filed a resident North Dakota income tax return for the year prior to the effective date of this Act and who:

   a. Was born in and lived in North Dakota until entrance into the armed forces of the United States;

   b. Was born in, but was temporarily living outside North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States;

   c. Was born elsewhere but had resided in North Dakota for the last twelve months before entrance into military service and had prior to or during that six-month period:

      (1) Voted in North Dakota;

      (2) Was an emancipated minor during the period of residence or had lived with a parent or person standing in loco parentis who was a resident; or

      (3) Was not registered for voting in another state after being a resident; or

   d. Was a bona fide resident of North Dakota at the time of entering the armed forces, as determined under the rules of the adjutant general and the laws of this state. A person is not a resident of North Dakota for the purpose of receiving any benefits under this Act if the person was on continuous active duty in the armed forces for a period of seven years or more, immediately prior to the qualifying period of service, and has not established actual abode in North Dakota prior to the effective date of this Act.

7. "Theatre or area of armed conflict" means any area the president designated a combat zone by executive order for the Persian Gulf War or the Grenada, Lebanon, or Panama armed conflicts.

8. "Veteran" means a member of the regular active duty armed forces of the United States who performed honorable and faithful service at any time during a period of service in the theatre or area of armed conflict, who was a resident of North Dakota, and who has not received a bonus or adjusted compensation from another state for the same period of service.

SECTION 2. Payment of adjusted compensation for service. Each veteran is entitled to one hundred dollars for each month or any part of a month for qualifying service. The total compensation paid to any veteran for qualifying service under this Act may not exceed one thousand dollars, except as provided in this section and section 3 of this Act. If the veteran received a purple heart for qualifying service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation. If the veteran is deceased,

the veteran's beneficiary is entitled to any payments under this Act to which the veteran would have been entitled. Applications may be filed with the adjutant general after July 1, 1993, but not later than December 31, 1994.

SECTION 3. Payment to beneficiary of veteran who died in active service. In the case of a veteran who died as a result of qualifying service during a period of service or who died while on orders to or from the Persian Gulf theatre or the Grenada, Lebanon, or Panama areas of armed conflict during a period of service, the beneficiary of the veteran is entitled to a payment of two thousand five hundred dollars in lieu of any other compensation under this Act.

SECTION 4. Application. Each veteran or veteran's beneficiary entitled to payment under this Act shall make application to the adjutant general upon a form prescribed by the adjutant general. If the veteran is incompetent or the veteran's beneficiary is incompetent or a minor, application may be made by the guardian of the veteran or beneficiary, and if there is no guardian the person determined by the adjutant general to have assumed the major responsibility for the care of the veteran or beneficiary and to be a proper person to receive payment for the veteran or beneficiary may make the application. If a veteran is hospitalized in a state, county, or federal institution and no application has been approved by the adjutant general, the person in charge of the institution may make the application with the approval of the adjutant general. For the purposes of this section, the word "minor" does not include the unremarried spouse of a veteran. Each application must be accompanied by a certified copy of honorable discharge or other evidence of honorable and faithful qualifying service. Each application must be subscribed and sworn to by the applicant in the manner prescribed by the adjutant general.

SECTION 5. Method of payment - Deduction of sums due veterans' aid fund. Upon submission of satisfactory proof that the applicant is entitled to payment under this Act, the adjutant general shall compute the amount of payment due the applicant, make a record thereof, and forward a voucher for the payment to the office of management and budget, which shall cause the warrant-check to be issued for the amount of the claim. Payment must be made from funds appropriated by the legislative assembly. If the veteran or the applicant for payment under this Act is indebted to the veterans' aid fund of the state of North Dakota, the adjutant general shall determine the amount of the indebtedness and certify the determination to the office of management and budget together with the record of payment due. Within the limits of the payment due, the amount of the indebtedness must be paid to the veterans' aid fund and the applicant must be paid any remainder to which the veteran is entitled.

SECTION 6. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted. Payments under this Act are exempt from all state and local taxes, including an income tax liability determined under section 57-38-30.3, and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this Act is void and payment to the veteran may not be denied because of any sums owed to the state or any political subdivisions except as provided in section 5 of this Act.

SECTION 7. Duty of adjutant general - Finality of decisions - Questions of residence subject to court review. The adjutant general shall administer this Act. The adjutant general shall prepare and distribute application blanks and investigate all claims and applications filed. If the adjutant general is satisfied of the

proof of a claim and application, the adjutant general shall approve and direct payment of the claim. The adjutant general may adopt any rules necessary to the efficient administration of this Act. The necessary documents used in the administration of this Act shall become a part of the permanent records of the office of the adjutant general. The adjutant general may determine any claim in any case if doubt arises as to the eligibility of an applicant to receive payment and the decision of the adjutant general in such case is final, except on questions of residence which are subject to review by a court of competent jurisdiction. The adjutant general shall authorize payment for prisoners of war upon their release and return.

SECTION 8. Penalty for false statement. Any person who willfully makes a false statement in the application for benefits under this Act is guilty of a class A misdemeanor.

SECTION 9. Exemption - Unobligated funds. The veterans' adjusted compensation appropriation contained in section 10 of chapter 385 of the 1991 Session Laws is not subject to the provisions of section 54-44.1-11, and up to $190,000 from any unobligated funds from the appropriation in section 10 of chapter 385 of the 1991 Session Laws is available for continued payment of adjusted compensation to veterans in accordance with the provisions of chapter 385 of the 1991 Session Laws and this Act, for the period from the effective date of this Act through December 31, 1994.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 30, 1993
Filed May 3, 1993

MINING AND GAS AND OIL PRODUCTION

CHAPTER 367

SENATE BILL NO. 2230
(Senator Yockim)
(Representative Wald)

OIL AND GAS METER TESTING

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to testing of oil and gas meter and measuring devices; to amend and reenact subdivision h of subsection 1 of section 38-08-04, sections 38-08-20, and 64-02-13 of the North Dakota Century Code, relating to the authority of the industrial commission to test and approve oil and gas meters and measuring devices; and to repeal section 64-02-15.1 of the North Dakota Century Code, relating to the duty of the public service commission to test and certify oil and gas production meters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision h of subsection 1 of section 38-08-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

h. Metering or other measuring of oil, gas, or product related to production in pipelines, gathering systems, storage tanks, barge terminals, loading racks, refineries, or other places, by meters or other measuring devices approved by the commission.

SECTION 2. AMENDMENT. Section 38-08-20 of the North Dakota Century Code is amended and reenacted as follows:

38-08-20. Commingling of production - Central production facility - Metering of production - Testing of meters. A producer may not commingle production from two or more oil or gas wells with diverse ownership in a storage facility without prior approval of the commission after notice and opportunity for hearing. If the commingling of production is for the express purpose of separating, metering, holding, and marketing of production, the owner of the wells shall apply to the commission for approval of the proposed commingling of production at a storage facility. If wells producing into a centralized storage facility have diverse ownership, the production from each well must be measured by meters approved and tested by or under the direction of the commission ~~and tested by the department of weights and measures as provided in section 64-02-15.1~~ or production must be measured by some other method the commission has approved after notice and opportunity for hearing. If wells producing into a centralized storage facility have common ownership, including the common ownership of the working interest, the common ownership of the royalty ownership, and the common ownership of any overriding royalty owners, the production from each well need not be measured on meters approved by the commission if the owner of the wells demonstrates to the commission that the production from each well can be accurately determined at reasonable intervals by other means.

SECTION 3. A new section to chapter 38-08 of the North Dakota Century Code is created and enacted as follows:

Testing upon request of a royalty owner. Upon request by a royalty owner to test an oil and gas meter or measuring device, the commission shall test the meter or measuring device or contract for the testing by a qualified meter tester who is independent of any operator or purchaser of production from the metered well.

SECTION 4. AMENDMENT. Section 64-02-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

64-02-13. Commission to test weighing or measuring devices annually. The commission may test or calibrate weighing or measuring devices annually. The owner of any weighing or measuring device used in this state is responsible for its accuracy and condition, and shall have it tested at least annually. If upon testing the weighing or measuring device is within the permitted tolerance, it must be sealed. Inspections and testing of farm milk bulk tank equipment may be made only by the state dairy department under section 4-30-18. Inspections and testing of oil and gas production meters and measuring devices may be made only by or under the direction of the industrial commission under section 38-08-04. If upon complaint, the commission finds the weighing or measuring device is within the permitted tolerance, the cost of the test must be paid by the complainant; and in all other cases the cost of testing must be paid by the owner of the equipment.

SECTION 5. REPEAL. Section 64-02-15.1 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 368

SENATE BILL NO. 2342
(Senators Krauter, Goetz)
(Representatives Byerly, Hokana)

FLARED GAS TAXATION

AN ACT to amend and reenact section 38-08-06.4 of the North Dakota Century Code, relating to the flaring of gas, the imposition of the gross production tax and the payment of royalties for gas flared illegally, and the industrial commission's duties; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-06.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-06.4. Flaring of gas restricted - Imposition of tax - Payment of royalties - Industrial commission authority. As permitted under rules of the industrial commission, gas produced with crude oil from an oil well may be flared during a one-year period from the date of first production from the well, or until June 30, 1986, for wells in production prior to July 1, 1985. Thereafter, flaring of gas from the well must cease and the well must either be capped or connected to a gas gathering line. For a well operated in violation of this section, the producer shall pay royalties to royalty owners ~~and gross production tax imposed under section 57-51-02~~ upon the value of the flared gas and shall also pay gross production tax on the flared gas at the rate imposed under section 57-51-02.2. The industrial commission ~~shall~~ may enforce this section and, for each well operator found to be in violation of this section, ~~shall~~ may determine the value of flared gas for purposes of payment of ~~gross production tax and~~ royalties under this section and its determination is final. A producer may obtain an exemption from this section from the industrial commission upon application and a showing that connection of the well to a natural gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available.

SECTION 2. APPLICATION OF ACT. This Act applies to all gas flared from and after July 1, 1987; provided, however, that this amendment may not be construed to entitle any producer to obtain a refund of taxes or royalty paid prior to the effective date of this Act.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 369

HOUSE BILL NO. 1112
(Natural Resources Committee)
(At the request of the Industrial Commission)

COAL EXPLORATION ROAD

AN ACT to amend and reenact section 38-12.1-03, subdivision a of subsection 1 of section 38-12.1-04, and section 38-12.1-08 of the North Dakota Century Code, relating to a definition of road for coal exploration purposes and application of the penalty provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-12.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **38-12.1-03. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Coal" means a dark-colored, compact, and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes lignite in both oxidized and nonoxidized forms, whether or not the material is enriched in radioactive materials.

2. "Coal exploration" means:

   a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or aid in determining the quantity and quality of coal present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or

   b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.

3. "Commission" means the industrial commission of the state of North Dakota.

4. "Permit area" means a county.

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[1] NOTE: Section 38-12.1-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

5. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

6. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 38-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and regulations of the commission prescribed to govern the exploration for coal on state and private lands and roads used in coal exploration within the state of North Dakota.

SECTION 3. AMENDMENT. Section 38-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

38-12.1-08. Civil and criminal penalties - Unclassified.

1. Any person, including a director, officer, or agent of a corporate permittee, who violates this chapter, or any permit condition or regulation implementing this chapter is subject to a civil penalty not to exceed five thousand dollars per day of such violation.

2. Any person, including a director, officer, or agent of a corporate permittee, who knowingly violates this chapter, or any permit condition or regulation implementing this chapter or who knowingly reports information required by this chapter falsely is subject, upon conviction, to a criminal penalty of not more than ten thousand dollars or by imprisonment for not more than one year.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 370

HOUSE BILL NO. 1129
(Natural Resources Committee)
(At the request of the Public Service Commission)

SURFACE MINING APPLICANT HISTORY

AN ACT to amend and reenact subsection 5 of section 38-14.1-21 of the North Dakota Century Code, relating to surface coal mine permit approval or denial standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 38-14.1-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Where information available to the commission indicates that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of this chapter, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule of the United States or the state of North Dakota, or of any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, ~~incurred by the applicant in connection with any surface coal mining operation during the three year period prior to the date of application~~ the permit may not be issued until the permit applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority with jurisdiction over the violation.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 371

HOUSE BILL NO. 1130
(Natural Resources Committee)
(At the request of the Public Service Commission)

PREBLASTING SURVEY RADIUS

AN ACT to amend and reenact subdivision e of subsection 13 of section 38-14.1-24 to the North Dakota Century Code, relating to the distance from a permitted area within which an owner or resident of a structure may request a preblasting survey of such structure to be submitted to the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 13 of section 38-14.1-24 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within ~~one-half mile [804.67 meters]~~ one mile [1.61 kilometers] of any portion of the permitted area the permittee shall conduct a preblasting survey of such structures and submit the survey to the commission and a copy to the resident or owner making the request. The area of the survey must be decided by the commission and must include such provisions as the commission may promulgate.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 372

HOUSE BILL NO. 1271
(Representatives Brown, Martin)
(Senators Keller, Krauter, Urlacher)

SMALL MINING OPERATORS ASSISTANCE

AN ACT to amend and reenact section 38-14.1-37 of the North Dakota Century Code, relating to the expansion of the small operators assistance program to cover the cost of surface mining permit applications; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-14.1-37 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-14.1-37. Small operators.

1. The provisions of this chapter do not apply to any of the following activities:

   a. Extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.

   b. Extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the commission.

2. If the commission finds that the probable total annual production at all locations to be mined by any permit applicant will not exceed ~~one~~ three hundred thousand tons [~~90,718.47~~ 272155.41 metric tons], the cost of the following activities, which must be performed by a qualified public or private entity designated by the commission, may be assumed by the commission upon the written request of the operator in connection with a permit application:

   a. The determination of probable hydrologic consequences required by subdivision o of subsection 1 of section 38-14.1-14, including the engineering analyses and designs necessary for the determination.

   b. The development of cross sections, maps, and plans required by subdivision r of subsection 1 of section 38-14.1-14.

   c. The geologic drilling and the statement of the result of test borings ~~or~~ and core samplings required by subdivision s of subsection 1 of section 38-14.1-14 ~~must, upon the written request of the permit applicant, be performed by a qualified public or private laboratory designated by the commission. The cost of the preparation of such determination and statement must be assumed by the commission~~.

   d. The collection of cultural resource information required by subdivision u of subsection 1 of section 38-14.1-14, any other

archaeological and historical information required by the superintendent of the state historical board, and the preparation of mitigation plans necessitated thereby.

e. Preblast surveys required by subdivision e of subsection 13 of section 38-14.1-24.

f. The collection of site-specific resource information, and the development of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the commission in accordance with this chapter.

3. The commission may provide or assume the cost of training coal operators who meet the qualifications in subsection 2 concerning the preparation of permit applications and compliance with the regulatory program.

4. An operator who has received assistance under subsection 2 shall reimburse the commission for the cost of the services rendered if the commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand tons [272155.41 metric tons] during the twelve months immediately following the date the operator is issued a surface coal mining and reclamation permit.

5. Proposed surface coal mining operations that will not be subject to payment of reclamation fees required by the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.] are not eligible for the assistance to small operators provided by subsections 2 and 3.

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

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 373

SENATE BILL NO. 2193
(Natural Resources Committee)
(At the request of the Public Service Commission)

ABANDONED MINE RECLAMATION

AN ACT to create and enact two new subsections to section 38-14.2-03 of the North Dakota Century Code, relating to powers of the public service commission under the abandoned surface mine reclamation laws; and to amend and reenact subsection 3 of section 38-14.2-04 and section 38-14.2-06 of the North Dakota Century Code, relating to the state abandoned mine reclamation fund and eligible lands and water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 38-14.2-03 of the North Dakota Century Code are created and enacted as follows:

May expend moneys from the fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible lands, if the commission makes a finding of fact and the office of surface mining reclamation and enforcement concurs that:

a. An emergency exists constituting a danger to the public health, safety, or general welfare; and

b. No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

Its agents, employees, and contractors may enter upon any land where the emergency exists and any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry is an exercise of police power and is not condemnation or trespass of property. The moneys and the benefits accruing are charged against the land and mitigate or offset any claim by any owner for any alleged damages. This provision does not create new rights of action or eliminate existing immunities.

[1] **SECTION 2. AMENDMENT.** Subsection 3 of section 38-14.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[1] NOTE: Section 38-14.2-04 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

3. There is created a special fund in the state treasury called the state abandoned mine reclamation fund set-aside trust account. Revenue to the set-aside trust account must be ten percent of the amount granted by the secretary of the interior under Title IV of P.L. 95-87 as provided by P.L. 100-34. This account must be interest bearing and all interest must be credited to the set-aside trust account. No funds from this account may be expended prior to September 30, ~~1995~~ 2004. After September 30, ~~1995~~ 2004, the funds may be expended as provided in this subsection but no funds may be used to reclaim noncoal projects. The ~~legislature~~ legislative assembly shall authorize expenditure by appropriation from the account as necessary to defray the administrative expenses of the program. The remaining funds in the account may only be used in accordance with section 38-14.2-07 but no funds may be used on noncoal projects. The liability of the state to fulfill the requirements of this subsection is limited to the amount of funds available in the account established in this subsection. The state has no obligations under this subsection except to the extent of federal funds deposited in the coal mine mitigation account and the interest thereon to operate the program.

SECTION 3. AMENDMENT. Section 38-14.2-06 of the North Dakota Century Code is amended and reenacted as follows:

38-14.2-06. Eligible lands and water. Lands and water eligible for reclamation or drainage abatement expenditures under this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to ~~July 1, 1979~~ August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws. Lands and water which were mined or affected by mining for minerals and materials other than coal are also eligible for reclamation under this chapter if such reclamation is necessary to protect the public health, safety, general welfare, and property and such noncoal abandoned mine lands were left in an inadequate reclamation status prior to ~~July 1, 1979~~ August 3, 1977, and for which there is no continuing reclamation responsibility under other state laws.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 374

HOUSE BILL NO. 1270
(Representatives Martin, Brown, Drovdal, Wardner)
(Senators Keller, Urlacher)

GRAVEL AND SAND MINING RECLAMATION

AN ACT to amend and reenact section 38-16-01.1 of the North Dakota Century Code, relating to reclamation of lands affected by gravel and sand surface mining operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

38-16-01.1. Gravel and sand surface mining operations - Reclamation - Civil action - Penalty. Any surface mining operator conducting a gravel or sand surface mining operation on land in this state owned by another person shall, upon completion or abandonment of the surface mining operation, reclaim the affected land. Each surface mining operator shall negotiate with the landowner a written agreement providing for the reclamation of the affected land. ~~The~~ Unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner, the reclamation agreement must, at a minimum, provide for restoration by the surface mining operator of the affected land as nearly as possible to its original contour and productivity~~, unless the affected land is to be used for other purposes as agreed upon between the surface mining operator and the landowner,~~ ; indicate the amount of topsoil and subsoil to be saved, segregated, and respread; and indicate the party responsible for compaction of backfill, soil testing, fertilization, revegetation, weed control, rock disposal, and replacement or establishment of conservation practices. The reclamation must be within a time period agreed upon between the parties, but within one year after the final cessation of surface mining operations. A landowner may bring a claim for relief in any appropriate district court against ~~a~~ the surface mining operator who has failed to reclaim properly affected land pursuant to a reclamation agreement under this section. In an action under this section, a surface mining operator is liable for damage in an amount necessary to reclaim the land. Any person ~~violating~~ who violates any provision of this section is guilty of a class B misdemeanor.

Approved April 7, 1993
Filed April 8, 1993

MOTOR VEHICLES

CHAPTER 375

HOUSE BILL NO. 1109
(Transportation Committee)
(At the request of the Department of Transportation)

OPERATOR'S LICENSE AND SUSPENSION

AN ACT to create and enact a new subsection to section 39-01-01 of the North Dakota Century Code, relating to definition of the terms operator's license, driver's license, and license to operate a motor vehicle; and to amend and reenact subsection 2 of section 39-01-17, subsection 1 of section 39-06-03.1, sections 39-06-20, 39-06-35, 39-06-36, subdivision b of subsection 7 of section 39-06.1-10, and subdivision b of subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to certification of records, nondriver photo identification cards, change of address and suspension for alcohol-related offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-01-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"Operator's license", "driver's license", or "license to operate a motor vehicle" means any operator's or driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

a. Any temporary license or instruction permit;

b. The privilege of any person to drive a motor vehicle whether such person holds a valid license; or

c. Any nonresident's operating privilege as defined in this section.

SECTION 2. AMENDMENT. Subsection 2 of section 39-01-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A certified copy of any record, electronic or original, maintained by the ~~commissioner~~ director relative to title 39 is admissible in any judicial proceedings or administrative hearing in the same manner as the original of the record.

SECTION 3. AMENDMENT. Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~commissioner~~ director shall issue upon request a nondriver color photo identification card to any ~~person~~ North Dakota resident, of the age of ~~fourteen~~ twelve years or over, fulfilling the requirements of this section. If the person is under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license of an operator under the age of twenty-one years.

SECTION 4. AMENDMENT. Section 39-06-20 of the North Dakota Century Code is amended and reenacted as follows:

39-06-20. Notice of change of address or name. Whenever any person after applying for or receiving an operator's license or permit moves from the address named in such application or in the license or permit issued to such person or when the name of a licensee is changed by marriage or otherwise, such person shall within ten days thereafter notify the ~~commissioner~~ director in writing or in person of such person's old and new addresses or of such former and new names and of the number of any license or permit then held by such person. Such person may obtain a corrected license or permit by making application as provided for in section 39-06-18.

SECTION 5. AMENDMENT. Section 39-06-35 of the North Dakota Century Code is amended and reenacted as follows:

39-06-35. Period of suspension. When the period of suspension imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the ~~commissioner~~ director a reinstatement fee of twenty-five dollars, or fifty dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until the provisions of subsection 3.1 of section 39-06.1-10 have been complied with. Upon payment of the reinstatement fee the license must be returned to the operator. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

SECTION 6. AMENDMENT. Section 39-06-36 of the North Dakota Century Code is amended and reenacted as follows:

39-06-36. Restoration of revoked licenses. Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the revocation period such person may make application for a new license as provided by law, but the ~~commissioner~~ director may not then issue a new license unless and until he is satisfied after investigation of the individual's driving records, driving habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. A person whose license or privilege to drive a motor vehicle has been revoked must pay to the ~~commissioner~~ director a revocation reinstatement fee of twenty-five dollars, or fifty dollars if the revocation was imposed for violation of subsection 5 of section 39-06-17, section 39-06-31, 39-06-43, or 39-20-04, in addition to any license renewal fee, for issuance of a new license. Until the reinstatement fee is paid the license and privilege to drive a motor vehicle remain under revocation. A reinstatement fee is not required if a revoked license is reinstated due to the findings of a hearing, reexamination of hearing, or court or judicial review as provided under chapter 39-06, 39-06.1, or 39-20.

SECTION 7. AMENDMENT. Subdivision b of subsection 7 of section 39-06.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. Three hundred ~~sixty-four~~ sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation.

[1] **SECTION 8. AMENDMENT.** Subdivision b of subsection 1 of section 39-20-04.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. For three hundred ~~sixty-four~~ sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.

Approved March 22, 1993
Filed March 23, 1993

[1] NOTE: Section 39-20-04.1 was also amended by section 4 of House Bill No. 1098, chapter 387.

CHAPTER 376

SENATE BILL NO. 2130
(Transportation Committee)
(At the request of the Department of Transportation)

MOBILITY-IMPAIRED PARKING AND LICENSES

AN ACT to amend and reenact subsections 1, 2, 4, 6, and 9 of section 39-01-15 and section 39-04-10.2 of the North Dakota Century Code, relating to mobility-impaired parking certificates and license plates; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsections 1, 2, 4, 6, and 9 of section 39-01-15 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Any mobility-impaired person who displays prominently upon an automobile parked by that person or under that person's direction and for that person's use, the distinguishing certificate specified in subsection 4 or license plates issued under section 39-04-10.2 is entitled to courtesy in the parking of the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

2. A mobility-impaired person as used in this section includes any person who ~~has lost the use of one or both legs~~ uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American heart association; or has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest.

4. The director may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written statement issued by a qualified physician to the director that the

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[1] NOTE: Section 39-01-15 was also amended by section 2 of House Bill No. 1027, chapter 261.

applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written statement from a qualified physician if the applicant has previously submitted an application containing a certification from a qualified physician that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be ~~at least five~~ nine and one-half inches [~~13.97~~ 24.13 centimeters] in height and ~~eight and one-half~~ three inches [~~21.59~~ 7.62 centimeters] in width and must bear, in ~~blue on white~~ white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's statement. The director may issue a maximum of one additional temporary certificate, for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's statement that the extension is warranted. ~~The director shall determine the form and size of the temporary certificate.~~ Temporary certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of ~~two~~ one additional ~~certificates~~ certificate, if the applicant does not have license plates issued under section 39-04-10.2, for a fee of six dollars per certificate, to a mobility-impaired person to whom a certificate has been issued under this subsection. The additional certificates may only be used by or on behalf of the mobility-impaired person.

6. A certificate issued under this section must be ~~prominently displayed on~~ hung from the ~~left-hand dashboard~~ rearview mirror of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility-impaired person or another person for the purposes of transporting the mobility-impaired person. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.

9. Whenever any public or private entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces must comply with the requirements of ~~American National Standards A117.1-1986~~ the Americans with disabilities accessibility guidelines and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by an official sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars

must be imposed. For particular events, a public or a private entity may reserve additional parking spaces for use by motor vehicles operated by mobility-impaired persons. In that case, each temporarily reserved space must be indicated by a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.

SECTION 2. AMENDMENT. Section 39-04-10.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-04-10.2. Special plates for mobility-impaired persons. The director may issue, without charge, upon application and payment of the regular license fee, plates marked with the internationally accepted symbol of access for the mobility impaired, to any ~~mobility-impaired applicant upon submission by the applicant of a written statement issued by a qualified physician to the director that the applicant is a mobility-impaired person within the meaning of subsection 2 of section 39-01-15. The director shall determine the form and size of the symbol and shall adopt rules governing the issuance of the plate~~ motor vehicle owner who possesses a parking certificate issued under subsection 4 of section 39-01-15. This section is not applicable to applicants who possess more than one parking certificate issued under subsection 4 of section 39-01-15.

SECTION 3. EFFECTIVE DATE. This Act becomes effective for parking certificates which expire after December 31, 1994.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 377

HOUSE BILL NO. 1076
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT BENEFITS

AN ACT to amend and reenact subdivision a of subsection 4 of section 39-03.1-11 of the North Dakota Century Code, relating to retirement benefits under the highway patrolmen's retirement system; to repeal section 39-03.1-24 of the North Dakota Century Code, relating to military service under the highway patrolmen's retirement system; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 4 of section 39-03.1-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:

(1) The first twenty-five years of credited service multiplied by two and ~~eighty-three~~ ninety-six hundredths percent of final average salary.

(2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.

(3) All contributors who retired before July 1, ~~1991~~ 1993, are entitled to receive benefits equal to two and ~~eighty-three~~ ninety-six hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning July 1, ~~1991~~ 1993.

SECTION 2. REPEAL. Section 39-03.1-24 of the North Dakota Century Code is repealed.

SECTION 3. APPLICATION OF ACT. This Act applies to benefits payable after June 30, 1993.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 378

SENATE BILL NO. 2252
(Senators Krauter, Goetz)
(Representatives Kretschmar, Porter, Kerzman)

PERSONALIZED VEHICLE PLATES

AN ACT to amend and reenact section 39-04-10.3 of the North Dakota Century Code, relating to personalized motor vehicle license plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-10.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-04-10.3. Personalized plates. The department may, in its discretion, provide special license plates marked with ~~initials~~ not more than seven numerals, letters, or ampersands, or combinations of numerals ~~and~~, letters, and ampersands, at the request of the registrant, upon application therefor and ~~upon~~ payment of an additional fee of twenty-five dollars per registration period. The department shall make the special license plates authorized by this section available for motor vehicles registered under section 39-04-10.6, trailers, travel trailers, and motorcycles. The fee for the special license plates issued under this section for vehicles registered under section 39-04-10.6 is a one-time fee of one hundred dollars. The special license plates ~~must~~ for motorcycles may contain not more than six numerals, letters, or ampersands, or a combination of not more than six numerals ~~and~~, letters, and ampersands. In the event of sale or transfer of the vehicle, the special license plates may remain with the vehicle or they may be surrendered and, upon application, ~~a~~ regular license ~~plate~~ plates must be issued without additional cost, or upon payment of the applicable registration fee, the special license plates must be transferred to the replacement motor vehicle.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 379

SENATE BILL NO. 2255
(Senators Krauter, Keller, Urlacher)
(Representatives Dorso, Kerzman, Kretschmar)

MOTOR VEHICLE REGISTRATION PRORATION

AN ACT to amend and reenact sections 39-04-14 and 39-04-14.1 of the North Dakota Century Code, relating to renewal of motor vehicle registrations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-14 of the North Dakota Century Code is amended and reenacted as follows:

39-04-14. Renewal of registration. Every vehicle registration, except those described in section 39-04-14.1, under this chapter expires on December thirty-first each year and must be renewed annually upon application by the owner and by payment of the fees required by law, such renewal to take effect on the first day of January each year. An owner who has made proper application for renewal of registration of a vehicle previous to January first but who has not received the number plates, plate, or registration card for the ensuing year is entitled to operate or permit the operation of such vehicle upon the highways upon displaying thereon the number plates or plate issued for the preceding year for such time, to be prescribed by the department, as may be required for the issuance of ~~such~~ the new plates. If a previously registered motor vehicle whose gross weight exceeds ten thousand pounds [4535.92 kilograms] is purchased during the period the vehicle's registration in this state is expired, the registration fee must be prorated on a monthly basis from the date of purchase to January first.

SECTION 2. AMENDMENT. Section 39-04-14.1 of the North Dakota Century Code is amended and reenacted as follows:

39-04-14.1. Renewal of registration of motor vehicles under certain weight. Except as otherwise provided in this section, the registration of a motor vehicle whose gross weight does not exceed ten thousand pounds [4535.92 kilograms] expires on the last day of the month which is the anniversary of the month it was originally registered. The registration may be renewed annually on application by the owner and payment of fees required by law. The renewal takes effect on the first day of the first month of the registration period. An owner of more than one vehicle qualifying for staggered registration under this section may renew all of the owner's vehicles in the same month. The registrar shall prorate the registration fees accordingly. If a previously registered motor vehicle whose gross weight does not exceed ten thousand pounds [4535.92 kilograms] is purchased during the period the vehicle's registration in this state is expired, the department shall collect the annual registration fee under section 39-04-19 and shall issue registration that expires on the last day of the month that is the anniversary of the month the vehicle was purchased.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 380

SENATE BILL NO. 2132
(Transportation Committee)
(At the request of the Department of Transportation)

VEHICLE REGISTRATION FEE DEPOSITS

AN ACT to amend and reenact section 39-04-39 of the North Dakota Century Code, relating to distribution of vehicle registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-39 of the North Dakota Century Code is amended and reenacted as follows:

39-04-39. Distribution of registration fees collected. Any moneys in the registration fund accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, must be promptly deposited ~~with the state treasurer who shall place such moneys~~ in ~~a~~ the highway tax distribution fund which must be distributed in the manner as prescribed by law.

Approved February 11, 1993
Filed February 11, 1993

CHAPTER 381

SENATE BILL NO. 2112
(Transportation Committee)
(At the request of the North Dakota Highway Patrol)

IDENTIFICATION REMOVAL AND ODOMETER TAMPERING

AN ACT to amend and reenact sections 39-05-28 and 39-21-51 of the North Dakota Century Code, relating to removal of engine, serial, or identification numbers from motor vehicles and selling or offering for sale vehicles with altered odometers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-28 of the North Dakota Century Code is amended and reenacted as follows:

39-05-28. Penalty for defacing, destroying, removing, or altering engine, serial, or identification numbers. Any person who with fraudulent intent shall:

1. Deface, destroy, remove, or alter the engine, serial, or identification number of a motor vehicle;

2. Place or stamp other than the original engine, serial, or identification number, or a number assigned, upon a motor vehicle; or

3. Sell or offer for sale any motor vehicle bearing an altered or defaced engine, serial, or identification number, other than the original or a number assigned, is guilty of a class C felony.

SECTION 2. AMENDMENT. Section 39-21-51 of the North Dakota Century Code is amended and reenacted as follows:

39-21-51. Alteration of odometers or other mileage recorders, hour meters on tachometers or other hour recorders - Penalty. A person may not willfully, as defined in section 12.1-02-02, alter a motor vehicle odometer or other mileage recorder, hour meter on tachometer or other hour recorder, or offer for sale or sell a motor vehicle knowing the odometer or other mileage recorder has been altered, for the purpose of deceiving another. Violation of this section is a class C felony if the person has previously been convicted of violating this section, or if the person has violated this section with respect to more than one vehicle, and a class B misdemeanor in all other cases.

Approved February 16, 1993
Filed February 16, 1993

CHAPTER 382

HOUSE BILL NO. 1024
(Legislative Council)
(Interim Budget Committee on Government Services)

IMPAIRED DRIVER TREATMENT

AN ACT to amend and reenact section 39-06-31 and subdivision g of subsection 4 of section 39-08-01 of the North Dakota Century Code, relating to treatment services for persons convicted of driving while under the influence of drugs or substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-31 of the North Dakota Century Code is amended and reenacted as follows:

39-06-31. Mandatory revocation of licenses. The commissioner shall revoke forthwith, for a period of one year, or for such period as may be recommended by the trial court, the license of any operator upon receiving a record of such operator's conviction of any of the following offenses:

1. Any felony, including a violation of chapter 12.1-16, in the commission of which a motor vehicle is used.
2. Any misdemeanor resulting from the operation of a motor vehicle and causing serious bodily injury, as defined in section 12.1-01-04, to another person.
3. The making of a false affidavit or statement under oath to the commissioner under this chapter or under any other law relating to the ownership or operation of motor vehicles.

The revocation of the license under this section may be beyond any time of imprisonment or court-ordered ~~inpatient~~ addiction treatment.

SECTION 2. AMENDMENT. Subdivision g of subsection 4 of section 39-08-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

g. If the penalty mandated by this section includes imprisonment upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo ~~inpatient~~ treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the ~~inpatient~~ treatment must be credited as a portion of a sentence of imprisonment under this section.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 383

SENATE BILL NO. 2174
(Transportation Committee)
(At the request of the Department of Transportation)

COMMERCIAL DRIVERS PENALTIES

AN ACT to create and enact nine new sections to chapter 39-06.2, and a new subdivision to subsection 1 of section 39-06.2-10 of the North Dakota Century Code, relating to alcohol-related offenses in a commercial motor vehicle, implied consent requirements, hearings, sanctions, judicial appeals, temporary driver permits, out-of-service orders, and operating a commercial motor vehicle while having an alcohol concentration of four one-hundredths of one percent by weight or greater; to create and enact section 4 to House Bill No. 1488, as approved by the fifty-third legislative assembly, which relates to driving without liability insurance and reissuance of a motor vehicle operator's license following certain cancellations of financial responsibility, and declaring retroactive application of that Act; to amend and reenact subsections 4 and 7 of section 39-06-32, subsection 2 of section 39-06.2-04, section 39-06.2-11, and subsection 1 of section 39-20-07 of the North Dakota Century Code, relating to sanctions for violating the implied consent laws of another state stemming from the operation of a commercial motor vehicle in another state, employer's notification of certain traffic offenses, providing a class D driver's license when a commercial driver's license is suspended, revoked, or disqualified, and alcohol concentration and its application to commercial drivers' licensing; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 7 of section 39-06-32 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. Refusal to submit to an implied consent chemical alcohol test in another state. For purposes of this subsection the specific requirements for establishing a refusal used in the other state may not be considered, and photostatic copies of the records of the other state's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section ~~39-20-04~~ 39-06.2-10.

7. An administrative decision in another state that the licensee's privilege to drive in that state is suspended or revoked because of a violation of that state's law forbidding motor vehicle operation with an alcohol concentration of at least ten one-hundredths of one percent by weight, or because of a violation of that state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by

weight. The specific requirements for establishing the violation in the other state may not be considered and certified copies of the records of the other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10.

SECTION 2. AMENDMENT. Subsection 2 of section 39-06.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Notification of suspensions, revocations, and cancellations. Any driver whose commercial driver's license is suspended, revoked, or canceled by any state, or who loses the privilege to drive a commercial motor vehicle in any state for any period, including being disqualified from driving a commercial motor vehicle, or who is subject to an out-of-service order, must notify the employer of that fact before the end of the business day following the day the driver received notice of that fact.

SECTION 3. A new subdivision to subsection 1 of section 39-06.2-10 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Driving or being in actual physical control of a commercial motor vehicle while the alcohol concentration of the person's blood, breath, or urine is four one-hundredths of one percent or more by weight.

SECTION 4. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Prohibited alcohol offenses for commercial motor vehicle drivers. Any person who drives or is in actual physical control of a commercial motor vehicle within this state with an alcohol concentration of at least four one-hundredths of one percent by weight must, in addition to any other sanctions which may be imposed under this code, be disqualified from driving a commercial motor vehicle under section 39-06.2-10.

SECTION 5. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Implied consent requirements for commercial motor vehicle drivers.

1. A person who drives or is in actual physical control of a commercial motor vehicle within this state is deemed to have given consent to take a test or tests of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs. The result of any test administered within two hours of driving or being in actual physical control of a commercial motor vehicle is that person's alcohol concentration. The test must be conducted pursuant to the provisions of section 39-20-07.

2. A test or tests may be administered at the direction of a law enforcement officer who, after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol or drugs in the driver's system.

3. A person requested to submit to a test as provided in subsection 1 or 5 must be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in that person being immediately placed out of service for a period of twenty-four hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under section 39-06.2-10.

4. If the person refuses testing, or submits to a test that discloses an alcohol concentration of at least four one-hundredths of one percent by weight, the law enforcement officer must submit a certified report to the director certifying that the test was requested pursuant to subsection 1 or 5 and that the person refused to submit to testing, or submitted to a test under subsection 1 which disclosed an alcohol concentration of at least four one-hundredths of one percent by weight.

5. A person who drives or is in actual physical control of a commercial motor vehicle within this state is deemed to have given consent to an onsite alcohol screening test under section 39-20-14.

6. Upon receipt of the certified report of a law enforcement officer submitted under subsection 4, the director must disqualify the driver from driving a commercial motor vehicle under section 39-06.2-10.

SECTION 6. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Action following test result for a resident driver. If a person submits to a test under section 5 of this Act and the test shows that person to have an alcohol concentration of at least four one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a commercial motor vehicle, the following procedures apply:

1. When a breath sample test result derived under section 39-20-07 reveals a resident driver to have an alcohol concentration of at least four one-hundredths of one percent by weight, the law enforcement officer shall immediately take possession of the person's commercial driver's license. The law enforcement officer shall issue the driver an out-of-service order as provided for in section 12 of this Act. If the driver then has valid driving privileges, the law enforcement officer must issue to the driver a temporary driver's permit, in accordance with section 11 of this Act.

2. If a test administered under section 5 of this Act was by a urine or blood sample and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the sample by the state toxicologist showing that person had an alcohol concentration of at least four one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota commercial driver's license or permit and, within twenty-four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law

enforcement agency shall also, on taking possession of the person's commercial driver's license, issue to that person a temporary driver's permit according to section 11 of this Act.

3. The halting officer, within five days of the issuance of the temporary driver's permit, shall forward to the director a certified written report in the form required by the director and the person's commercial driver's license taken under subsection 1 or 2. If the person was issued a temporary driver's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle while in violation of section 4 of this Act, that the person was lawfully detained, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least four one-hundredths of one percent by weight. In addition to the commercial driver's license and report, the law enforcement officer must forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

SECTION 7. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Action following test result or refusal of testing by nonresident driver. If a driver licensed in another state refuses, in this state, a test provided under section 5 of this Act or submits to a test under section 5 of this Act, and the test results show an alcohol concentration of at least four one-hundredths of one percent by weight, the following procedures apply:

1. When a breath sample test result, derived under section 39-20-07, reveals the driver to have alcohol concentration of at least four one-hundredths of one percent by weight, the halting officer, without taking possession of the person's out-of-state driver's license, shall inform the driver of the test results and issue an out-of-service order according to section 12 of this Act and a temporary driver's permit according to section 11 of this Act.

2. When a urine or blood sample test result, derived under section 39-20-07, reveals an alcohol concentration of at least four one-hundredths of one percent by weight, the halting officer shall mail the person a temporary driver's permit issued according to section 11 of this Act and a notice as provided under section 39-06.1-07.

3. The law enforcement officer, within five days of issuing the temporary driver's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer. If the person was issued a temporary driver's permit because of the person's refusal to submit to a test under sections 5 of this Act and 39-20-14, the report must include information as provided in section 6 of this Act. If the person was issued a temporary driver's permit because of the results of a

test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle while in violation of section 4 of this Act, that the person was lawfully detained, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least four one-hundredths of one percent by weight.

SECTION 8. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Revocation of privilege to drive commercial motor vehicle upon refusal to submit to testing. If a person refuses to submit to testing under section 5 of this Act, the law enforcement officer shall immediately take possession of the person's driver's license and issue to that person a temporary driver's permit. The director, upon the receipt of that person's driver's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary driver's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle while in violation of section 4 of this Act or, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully detained, and that the person had refused to submit to the screening test under section 5 of this Act, shall revoke that person's commercial driver's license or permit to drive and any nonresident commercial driver's privilege for the appropriate period under section 39-06.2-10, or if the person is a resident without a commercial driver's license or permit, the director shall deny to the person the issuance of a commercial driver's license or permit for the appropriate period under section 39-06.2-10 after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's driver's license the director shall give credit for time in which the person was without a driver's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary driver's permit.

SECTION 9. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.

2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be

recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 4 of this Act, whether the person was lawfully detained, whether the person was tested in accordance with section 5 of this Act, and whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 5 of this Act, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 5 of this Act may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 4 of this Act, whether the person was lawfully detained, and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under subsection 3 of section 7 of this Act may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was warned that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the office of the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the office of the state toxicologist or the clerk of district court, are regularly kept records of the director.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation,

suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 5 of this Act or that the person had an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary driver's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.

6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. On the date for which the hearing is scheduled, the hearing officer shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 10 of this Act.

SECTION 10. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Judicial review. Any person whose commercial driver's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 9 of this Act may appeal within seven days after the date of the hearing under section 9 of this Act as shown by the date of the hearing officer's decision, section 28-32-15 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

SECTION 11. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Temporary driver's permit. A temporary driver's permit extends driving privileges for twenty-five days, unless earlier terminated by the decision of a hearing officer under section 9 of this Act. The law enforcement officer must sign and note the date of issuance on the temporary driver's permit. The temporary driver's permit serves as the director's official notification to the driver of the director's intent to revoke, suspend, or deny driving privileges in this state. No temporary driver's permit may be issued for the period covered by an out-of-service order.

SECTION 12. A new section to chapter 39-06.2 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Out-of-service order - Rules. The director shall adopt rules for the issuance and enforcement of out-of-service orders. The rules must be in accordance with the standards and requirements of the federal Commercial Motor Vehicle Safety Act of 1986 [Pub. L. 99-570; 100 Stat. 3207-179; 49 App. U.S.C. 2708] and 49 CFR parts 383 and 392.

SECTION 13. AMENDMENT. Section 39-06.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06.2-11. License reissuance - Class D license. The ~~commissioner~~ director may issue a class D driver's license to a driver suspended, revoked, or disqualified under this chapter when:

1. The suspension, revocation, or disqualification arises from a violation under this chapter which would not require similar sanctions under chapter 39-06 ~~or~~, 39-06.1, or 39-20.
2. The period of suspension, revocation, or disqualification imposed for a violation under this chapter is greater than that which could have been imposed under chapter 39-06 ~~or~~, 39-06.1, or 39-20 for the same violation, and the period of suspension or revocation provided for under chapter 39-06 ~~or~~, 39-06.1, or 39-20 has been satisfied under the existing suspension or revocation.

SECTION 14. AMENDMENT. Subsection 1 of section 39-20-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A person having, at that time, an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor. This presumption has no application to the administration of chapter 39-06.2.

SECTION 15. Section 4 to House Bill No. 1488, as approved by the fifty-third legislative assembly, is created and enacted as follows:

SECTION 4. RETROACTIVE APPLICATION OF ACT. Section 2 of this Act applies retroactively to cases arising after April 9, 1990.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 384

HOUSE BILL NO. 1219
(Representatives Oban, Gates, Cleary)
(Senators Evanson, Marks, Mathern)

FAILURE TO YIELD TO PEDESTRIAN

AN ACT to amend and reenact subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to statutory fees for failure to yield the right of way to a pedestrian.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for ~~a~~:

   a. A violation of section 39-10-41 or 39-10-42, a fee of fifty dollars.

   b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 385

SENATE BILL NO. 2266
(Senators Redlin, Kelsh, Goetz)
(Representatives Cleary, Rydell, Soukup)

SAFETY BELTS

AN ACT to create and enact a new subsection to section 39-06.1-06 and two new sections to chapter 39-21 of the North Dakota Century Code, relating to the required use of safety belts in certain motor vehicles and providing for secondary enforcement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-06.1-06 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

For a violation of section 2 of this Act, a fee not to exceed twenty dollars.

SECTION 2. A new section to chapter 39-21 of the North Dakota Century Code is created and enacted as follows:

Use of safety belts required in certain motor vehicles - Enforcement. Subject to the limitations of this section and section 3 of this Act, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seat belt in accordance with section 39-21-41.2, to drivers of implements of husbandry, to operators of farm vehicles as defined in subsection 5 of section 39-04-19, to rural mail carriers while on duty delivering mail, or when all front seat safety belts are in use by other occupants. From the effective date of this Act until December 31, 1993, only warning tickets may be issued for a violation of this section.

SECTION 3. A new section to chapter 39-21 of the North Dakota Century Code is created and enacted as follows:

Secondary enforcement. A peace officer may not issue a citation for a violation of section 2 of this Act unless the officer lawfully stopped or detained the driver of the motor vehicle for another violation. Drivers' license points may not be assessed against any person for violation of section 2 of this Act.

Approved March 25, 1993
Filed March 25, 1993

CHAPTER 386

HOUSE BILL NO. 1324
(Representative Pyle)
(Senator Lips)

FLEEING POLICE OFFICER PENALTY

AN ACT to amend and reenact subsection 3 of section 39-06.1-10, subsection 1 of section 39-06.1-13, and section 39-10-71 of the North Dakota Century Code, relating to points assigned against a driving record and the penalty for fleeing or attempting to elude a peace officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-06.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Points must be assigned and accumulated on the basis of the following schedule:

a. Noncriminal Violations Noncriminal Adjudication or Admission of:

	Points Assigned:
(1) Overtime and double parking in violation of city ordinances	0 points
(2) Failure to display license plates	1 point
(3) Permitting unauthorized minor to drive	2 points
(4) Permitting unauthorized person to drive	2 points
(5) Unlawful stopping, standing, or parking on open highway in violation of section 39-10-47	2 points
(6) Unlawful parking in prohibited place	1 point
(7) Leaving motor vehicle improperly unattended on an open highway	1 point
(8) Opening or leaving motor vehicle doors open when unsafe to do so	1 point

(9)	Except as provided in sections 39-21-44 and 39-21-45.1, knowingly drove with defective, nonexistent, or unlawful equipment in violation of subsection 1 of section 39-21-46, or equivalent ordinances	2 points
(10)	Careless driving in violation of section 39-09-01, or equivalent ordinance	6 points
(11)	~~Repealed by S.L. 1981, ch. 389, § 4~~	
~~(12)~~	Violating or exceeding restrictions contained in a restricted certificate issued pursuant to section 39-06.1-03	4 points
~~(13)~~	~~Fleeing in motor vehicle from peace officer in violation of section 39-10-71, or equivalent ordinance~~	~~24 points~~
~~(14)~~(12)	Racing or drag racing motor vehicles in violation of section 39-08-03.1, or equivalent ordinance	10 points
~~(15)~~(13)	Exhibition driving in violation of section 39-08-03.1, or equivalent ordinance	3 points
~~(16)~~(14)	Failing to yield right of way in violation of section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, 39-10-44, or 39-10-72, or equivalent ordinances	2 points
~~(17)~~(15)	Disobeying an official traffic-control device in violation of section 39-10-04, 39-10-05, or 39-10-07, or equivalent ordinances	2 points

~~(18)~~(16)	Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or 39-10-16, or equivalent ordinances	2 points
~~(19)~~(17)	Failing to dim headlights in violation of section 39-21-21, or equivalent ordinance	1 point
~~(20)~~(18)	Failing to stop at railroad crossing in violation of section 39-10-41 or 39-10-42, or equivalent ordinances	3 points
~~(21)~~(19)	Knowingly drove with defective brakes in violation of section 39-21-32 or 39-21-33, or equivalent ordinances	2 points
~~(22)~~(20)	Disregarding the lawful commands of a police officer in violation of section 39-10-02, or equivalent ordinance	2 points
~~(23)~~(21)	Overtaking where prohibited or in an unsafe manner in violation of section 39-10-11, 39-10-12, 39-10-13, or 39-10-15, or equivalent ordinances	2 points
~~(24)~~(22)	Overtaking and passing a schoolbus in violation of section 39-10-46, or equivalent ordinance	6 points
~~(25)~~	~~Repealed by S.L. 1985, ch. 430, § 4~~	
~~(26)~~(23)	Operating a motor vehicle without a license in violation of section 39-06-01, or equivalent ordinance	4 points
~~(27)~~(24)	Improperly operating or unlawfully carrying passengers or packages on a motorcycle in violation of section 39-10.2-02,	2 points

or equivalent ordinance

~~(28)~~(25) Improperly operating a motorcycle in laned traffic in violation of section 39-10.2-03, or equivalent ordinance — 2 points

~~(29)~~(26) Clinging to other vehicles while riding a motorcycle in violation of section 39-10.2-04, or equivalent ordinance — 4 points

~~(30)~~(27) Carrying a passenger on a motorcycle not equipped with passenger footrests in violation of section 39-10.2-05, or equivalent ordinance — 2 points

~~(31)~~(28) Operating a motorcycle without protective headgear in violation of subsection 1 of section 39-10.2-06, or equivalent ordinance — 2 points

~~(32)~~(29) Failing to use the care required in section 39-09-01.1, or equivalent ordinance — 2 points

~~(33)~~(30) Except as provided in paragraphs ~~34~~ 31 and ~~37~~ 34 of this subdivision ~~a of subsection 3 of section 39-06.1-10~~, operating a motor vehicle in excess of speed limit in violation of section 39-09-02, or equivalent ordinance

16 - 20 mph over limit	3 points
21 - 25 mph over limit	4 points
26 - 35 mph over limit	6 points
36 - 45 mph over limit	8 points
46 + mph over limit	12 points

~~(34)~~(31) Within city limits on a noncontrolled access highway, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

6 - 10 mph over limit	1 point
11 - 15 mph over limit	2 points
16 - 20 mph over limit	3 points
21 - 25 mph over limit	4 points
26 - 35 mph over limit	6 points

	36 - 45 mph over limit	8 points
	46 + mph over limit	12 points
~~(35)~~(32)	Driving in violation of section 39-08-18	2 points
~~(36)~~(33)	Driving in violation of section 39-08-09	6 points
~~(37)~~(34)	On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as posted and designated by the commissioner pursuant to subdivision g of subsection 1 of section 39-09-02, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance	

Miles per hour over lawful speed limit	Points
6 - 10	1
11 - 15	4
16 - 25	7
26 - 35	10
36 +	12

b. Criminal Violations

Conviction of:	Points Assigned:
(1) Reckless driving, in violation of section 39-08-03, or equivalent ordinance	8 points
(2) Aggravated reckless driving, in violation of section 39-08-03, or equivalent ordinance	12 points
(3) Leaving the scene of an accident involving property damage in violation of section 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances	14 points
(4) Leaving the scene of an accident involving personal injury or death in violation of section 39-08-04, or equivalent ordinance	18 points
(5) ~~Repealed by S.L. 1991,~~	

	~~ch. 414, § 4, effective July 7, 1991~~	
~~(6)~~	~~Repealed by S.L. 1991, ch. 414, § 4, effective July 7, 1991~~	
~~(7)~~	~~Repealed by S.L. 1991, ch. 414, § 4, effective July 7, 1991~~	
~~(8)~~	Violating restrictions in a restricted license issued under section 39-06-17 and relating to the use of eyeglasses or contact lenses while driving	3 points
~~(9)~~(6)	Violating any restrictions other than those listed in paragraph ~~8~~ 5 of this subdivision, contained in a restricted license issued under section 39-06-17 or 39-06.1-11	4 points
~~(10)~~(7)	Except as provided in paragraph ~~12~~ 9 of this subdivision, operating a motor vehicle without liability insurance, in violation of section 39-08-20	6 points
~~(11)~~(8)	Knowingly drove a modified motor vehicle in violation of section 39-21-45.1, or equivalent ordinance	2 points
~~(12)~~(9)	Operating a motor vehicle without liability insurance, in violation of section 39-08-20, if the violation was discovered as the result of investigation of an accident in which the driver is the owner	14 points
~~(13)~~(10)	Knowingly failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive	2 points

	or hazardous materials	
~~(14)~~(11)	Except as provided in paragraph 9 of subdivision a of this subsection, knowingly operating an unsafe vehicle in violation of subsection 1 of section 39-21-46	2 points
(12)	Fleeing in a motor vehicle from a peace officer in violation of section 39-10-71, or equivalent ordinance	24 points

SECTION 2. AMENDMENT. Subsection 1 of section 39-06.1-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The licensing authority shall reduce the point total shown on any licensee's driving record by one point for each three-month period during which no points are recorded against ~~his~~ the licensee's driving record for a moving violation or a violation listed in paragraphs ~~13~~ 12 through ~~18~~ 16 of subdivision a of subsection 3 of section 39-06.1-10. The three-month period must be calculated from the date of entry of the last points against that licensee's driving record.

SECTION 3. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer. Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class A misdemeanor for a first or second offense and a class C felony for a subsequent offense. A signal complies with this section if the signal is perceptible to the driver and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or

2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 387

HOUSE BILL NO. 1098
(Transportation Committee)
(At the request of the Department of Transportation)

ALCOHOL CONCENTRATION OF OPERATORS

AN ACT to amend and reenact subdivision a of subsection 1 of section 39-08-01, sections 39-20-03.1, 39-20-03.2, 39-20-04.1, 39-20-05, subsection 4 of section 39-20-07, and sections 39-20-09 and 65-01-11 of the North Dakota Century Code, relating to alcohol concentration of motor vehicle operators and statutory references to the director of the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 39-08-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. That person has ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.

SECTION 2. AMENDMENT. Section 39-20-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator. If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the ~~commissioner's~~ director's official notification to the person of the ~~commissioner's~~ director's intent to revoke, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had ~~a blood~~ an alcohol

concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the ~~commissioner~~ director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the ~~commissioner's~~ director's official notification to the person of the ~~commissioner's~~ director's intent to revoke, suspend, or deny driving privileges in this state.

3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the ~~commissioner~~ director a certified written report in the form required by the ~~commissioner~~ director and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for ~~blood~~ alcohol concentration under this chapter, and that the results of the test show that the person had ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the ~~commissioner~~ director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

SECTION 3. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the ~~commissioner's~~ director's official notification to the person of the ~~commissioner's~~ director's intent to

revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the ~~blood~~ alcohol concentration analysis showing the person had ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight, shall mail the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the ~~commissioner~~ director a certified written report in the form required by the ~~commissioner~~ director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for ~~blood~~ alcohol concentration under this chapter, and that the results of the test show that the person had ~~a~~ ~~blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight.

SECTION 4. AMENDMENT. Section 39-20-04.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **39-20-04.1. Administrative sanction for driving or being in physical control of a vehicle while having certain ~~blood~~ alcohol concentration.**

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having ~~a blood~~ an alcohol concentration of at

[1] NOTE: Section 39-20-04.1 was also amended by section 8 of House Bill No. 1109, chapter 375.

least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the ~~commissioner~~ director shall suspend the person's operator's license as follows:

a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.

b. For three hundred sixty-four days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.

c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

2. In the suspension of the person's operator's license the ~~commissioner~~ director shall give credit for the time the person was without an operator's license after the day of the offense, except that the ~~commissioner~~ director may not give credit for the time the person retained driving privileges through a temporary operator's permit issued under section 39-20-03.1 or 39-20-03.2.

SECTION 5. AMENDMENT. Section 39-20-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **39-20-05. Administrative hearing on request.**

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within twenty-five days after the date of issuance of the temporary operator's permit, but the hearing officer may extend the hearing to within thirty-five days after the issuance of the temporary operator's permit to accommodate the efficient scheduling of hearings. Upon a showing of good cause by the operator, or upon learning of the unavailability of the operator, or the operator's attorney, or a witness, the hearing officer may schedule the hearing on a date within forty-five days of the date of the operator's arrest. If the hearing date is extended beyond twenty-five days from the issuance of the

[2] NOTE: Section 39-20-05 was also amended by section 3 of Senate Bill No. 2136, chapter 389, and by section 7 of Senate Bill No. 2228, chapter 236.

temporary operator's permit, the director shall provide extended temporary operator's privileges to the date of the hearing. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the ~~commissioner~~ director and at a time and place designated by the ~~commissioner~~ director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance; whether the person was placed under arrest; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the ~~blood~~ alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the ~~commissioner~~ director at a time and place designated by the ~~commissioner~~ director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the ~~commissioner~~ director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, any copy of a certified copy of an analytical report of a blood,

urine, or saliva sample received by the ~~commissioner~~ director from the office of the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the ~~commissioner~~ director from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for ~~blood~~ alcohol concentration received by the ~~commissioner~~ director from the office of the state toxicologist or the clerk of district court, are regularly kept records of the ~~commissioner~~ director.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the ~~commissioner's~~ director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the ~~commissioner~~ director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the ~~commissioner~~ director shall return the person's operator's license by regular mail to the address on file with the ~~commissioner~~ director under section 39-06-20.

6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the ~~commissioner~~ director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the ~~commissioner's~~ director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 6. AMENDMENT. Subsection 4 of section 39-20-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic centimeters~~ milliliters of blood or grams of alcohol per two

hundred ten liters of alveolar air or grams of alcohol per sixty-seven ~~cubic centimeters~~ milliliters of urine.

SECTION 7. AMENDMENT. Section 39-20-09 of the North Dakota Century Code is amended and reenacted as follows:

39-20-09. Effect of evidence of chemical test. The provisions of this chapter do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test results show ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent, the purpose of such evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

SECTION 8. AMENDMENT. Section 65-01-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **65-01-11. Burden of proof in compensation matters - Death certificate.** If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary intoxication of the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, ~~a blood~~ an alcohol level above the legal intoxication limit as defined in subsection 3 of section 39-20-07 creates a rebuttable presumption that the injury was due to intoxication. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death.

Approved March 16, 1993
Filed March 16, 1993

[3] NOTE: Section 65-01-11 was also amended by section 4 of Senate Bill No. 2200, chapter 614.

CHAPTER 388

SENATE BILL NO. 2299
(Senator Lindgren)

DUI MULTIPLE OFFENSES

AN ACT to amend and reenact subsection 2 of section 39-08-01 of the North Dakota Century Code, relating to sentences for persons operating a motor vehicle while under the influence of intoxicating liquor or any other drug or substance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-08-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second ~~conviction~~ offense in a five-year period, and of a class A misdemeanor for a later ~~conviction~~ offense in a five-year period. Notwithstanding the other provisions of this subsection, a person violating this section or equivalent ordinance is guilty of a class A misdemeanor for the fourth or subsequent ~~conviction~~ offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that ~~a conviction~~ an offense would be a subsequent ~~conviction~~ offense if indicated by the records of the director or may make such finding based on other evidence.

Approved March 11, 1993
Filed March 11, 1993

CHAPTER 389

SENATE BILL NO. 2136
(Transportation Committee)
(At the request of the Department of Transportation)

IMPLIED CONSENT HEARINGS

AN ACT to amend and reenact section 39-08-10, subsections 1, 2, and 3 of section 39-08-13, and subsection 1 of section 39-20-05 of the North Dakota Century Code, relating to reporting of motor vehicle accidents and implied consent administrative hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-08-10 of the North Dakota Century Code is amended and reenacted as follows:

39-08-10. Officer to report. Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in section 39-08-09 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and ~~forward promptly a written report of such accident to the commissioner~~ promptly forward to the director a report of the accident in a format prescribed by the director.

SECTION 2. AMENDMENT. Subsections 1, 2, and 3 of section 39-08-13 of the North Dakota Century Code are amended and reenacted as follows:

1. The ~~commissioner~~ director shall prepare and supply to law enforcement agencies, garages, and other suitable agencies or individuals forms for accident reports required by law, appropriate with respect to the purposes to be served. The ~~written~~ reports to be made by investigating officers shall call for sufficiently detailed information to disclose the cause of a traffic accident, conditions then existing, persons and vehicles involved, and whether the requirements for the deposit of security under section 39-16-05 are applicable.

2. Every accident report required to be made ~~in writing~~ to the director must be made ~~on~~ in the appropriate ~~form~~ format or approved by the ~~commissioner~~ director and must contain all the information required therein unless not available.

3. Every law enforcement officer who investigates a vehicle accident for which a report must be made as required in this chapter shall forward a ~~written~~ report of such accident to the department within five days after investigation of the accident.

[1] **SECTION 3. AMENDMENT.** Subsection 1 of section 39-20-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within twenty-five days after the date of issuance of the temporary operator's permit, but the hearing officer may extend the hearing to within ~~thirty-five~~ thirty days after the issuance of the temporary operator's permit to accommodate the efficient scheduling of hearings. ~~Upon a showing of good cause by the operator, or upon learning of the unavailability of the operator, or the operator's attorney, or a witness, the hearing officer may schedule the hearing on a date within forty-five days of the date of the operator's arrest.~~ If the hearing date is extended beyond twenty-five days from the issuance of the temporary operator's permit, the director shall provide extended temporary operator's privileges to the date of the hearing. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

Approved February 16, 1993
Filed February 16, 1993

[1] NOTE: Section 39-20-05 was also amended by section 5 of House Bill No. 1098, chapter 387, and by section 7 of Senate Bill No. 2228, chapter 236.

CHAPTER 390

HOUSE BILL NO. 1488
(Representatives Allmaras, Dorso, Freier, Timm)
(Senators Mutch, O'Connell)

PROOF OF INSURANCE FOR DRIVERS

AN ACT to amend and reenact section 39-08-20 and subsection 3 of section 39-16.1-19 of the North Dakota Century Code, relating to driving without liability insurance and reissuance of a motor vehicle operator's license following certain cancellations of financial responsibility; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-08-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-08-20. Driving without liability insurance prohibited - Penalty. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may ~~not~~ be charged with a violation of this section if that person ~~submits~~ fails to submit such evidence to the officer or the officer's agency within twenty days of the date of the request. If that person produces a valid policy of liability insurance in effect at the time of violation of this section to the officer, officer's agency, or a court, that person may not be convicted or assessed any court costs for violation of this section. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars.

SECTION 2. AMENDMENT. Subsection 3 of section 39-16.1-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Whenever any person whose proof has been canceled or returned under subdivision c of subsection 1 applies for a license within a period of ~~three years~~ one year from the date proof was originally required, ~~any such~~ the application must be refused ~~and no license may be returned or reissued and the~~. The person's operator's license and driving privileges ~~shall remain~~ remain under suspension or revocation, ~~unless~~ until the applicant ~~shall reestablish such~~ reestablishes proof for the remainder of ~~such three year~~ the one-year period ~~and pay to the commissioner in addition to any other fees, a fee of ten dollars~~.

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

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 391

SENATE BILL NO. 2173
(Senators Marks, O'Connell)
(Representative Bernstein)

VEHICLE HEIGHT LIMITATIONS

AN ACT to amend and reenact subsection 2 of section 39-12-04 of the North Dakota Century Code, relating to height limitations on vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-12-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. A height of ~~thirteen~~ fourteen feet ~~six inches~~ [~~4.11~~ 4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not ~~thirteen~~ fourteen feet ~~six inches~~ [~~4.11~~ 4.27 meters] in height.

b. The limitation in subdivision a does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:

(1) The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.

(2) The trip is at most ~~forty~~ sixty miles [~~64.40~~ 96.56 kilometers].

(3) The trip is between sunrise and sunset.

(4) None of the trip is on an interstate highway.

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

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 392

SENATE BILL NO. 2419
(Senator Tomac)
(Representatives Cleary, Gerntholz)

TOURIST-ORIENTED SIGNS

AN ACT to amend and reenact section 39-13-09 of the North Dakota Century Code, relating to tourist-oriented directional signs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-13-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-13-09. Tourist-oriented directional signs.

1. In this section:

   a. "Tourist-oriented directional sign" means a sign providing identification of and directional information for tourist-related businesses, services, or activities.

   b. "Tourist-related business, service, or activity" means ~~destination~~ rural agricultural business and tourism attractions, including recreation, historical sites, festival and cultural events, lodging and food services which are singularly and uniquely related to historical, cultural, or recreational tourist attractions, and guide services, but does not include any business operated under a franchise agreement.

2. Notwithstanding section 24-01-12, the department shall establish by rule standards for the erection and maintenance of tourist-oriented directional signs. The rules must conform to federal standards for tourist-oriented directional signs adopted under 23 U.S.C. 131(q) as of July 1, 1991, and with the manual of uniform traffic-control devices adopted by the department under section 39-13-06 except that the rules must provide that logos may not be used on tourist-oriented directional signs. The rules must require that each sign must be seventy-two inches [182.88 centimeters] wide and sixteen inches [40.64 centimeters] high. The rules must include all of the following:

   a. Criteria for eligibility for signing.

   b. Criteria for limiting or excluding businesses, services, and activities that maintain signs that do not conform to requirements under 23 U.S.C. 131.

   c. Provisions for fees to cover costs of ~~sign manufacture, erection, and maintenance to be collected through~~ administration of a permit system.

d. Provisions specifying sign design and composition.

e. Criteria for determining when to permit advance signing.

f. Criteria for determining when to permit signing for facilities that are not located on a crossroad of a highway upon which tourist-oriented directional signs are permitted.

g. Criteria for signing at at-grade intersections of expressways.

h. Provisions specifying conditions under which the time of operation of a business, service, or activity is shown.

i. Provisions for covering or removing signs during off seasons for businesses, services, and activities operated on a seasonal basis.

j. Provisions specifying the maximum number of signs permitted per intersection.

k. Provisions for limiting the number of signs.

l. Provisions stating the qualifications of contractors.

3. Upon the request of any person, a local authority that has adopted an ordinance permitting the erection of tourist-oriented directional signs may authorize their erection within the right of way of any highway under the jurisdiction of the local authority except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. No tourist-oriented directional sign may be erected unless it is erected in compliance with rules adopted by the department for such signs.

4. The ~~department~~ permit applicant shall ~~contract~~ engage a qualified contractor for the erection, installation, and maintenance of tourist-oriented directional signs within the right of way of any highway under the jurisdiction of the department except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. No tourist-oriented directional sign may be erected unless it is erected in compliance with rules adopted by the department for such signs.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 393

HOUSE BILL NO. 1097
(Transportation Committee)
(At the request of the Department of Transportation)

FINANCIAL RESPONSIBILITY LICENSE SANCTIONS

AN ACT to amend and reenact section 39-16.1-07 of the North Dakota Century Code, relating to the revocation or suspension of an operator's license for failure to comply with financial responsibility laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-16.1-07 of the North Dakota Century Code is amended and reenacted as follows:

39-16.1-07. Revocation or suspension of license for reasons other than provisions of this chapter.

1. Whenever the ~~commissioner~~ director under any other law of this state, except ~~subsections 1 through 5 of section~~ sections 39-06-40 and ~~section~~ 39-06-40.1, revokes the license of any person, the license must remain revoked and may not be renewed nor shall any license be issued to such person, unless the person gives and maintains proof of financial responsibility.

2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of license, driving or being in actual physical control of a vehicle while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while the person's license or privilege to drive is under suspension~~,~~ for a violation requiring a license or privilege to drive suspension of at least nintey-one days or revocation~~, or cancellation~~, the license or driving privilege must remain suspended~~,~~ or revoked~~, or canceled~~ and ~~may not be renewed, nor may any~~ no license may be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.

3. ~~If a person's operator's license has been revoked or suspended or issuance has been denied as an administrative sanction under chapter 39-20, the person's operator's license may not be renewed, nor may any license be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.~~

~~4.~~ Whenever the ~~commissioner~~ director revokes or suspends a nonresident's operating privilege by reason of an administrative sanction under chapter 39-20, a conviction, or forfeiture of bail, the privilege remains revoked or suspended unless the person gives and maintains proof of financial responsibility.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 394

SENATE BILL NO. 2137
(Transportation Committee)
(At the request of the Department of Transportation)

OPERATOR'S LICENSE REVOCATION REVIEW

AN ACT to amend and reenact section 39-20-06 of the North Dakota Century Code, relating to judicial review when a person's operator's license is suspended or revoked.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

39-20-06. Judicial review. Any person whose operator's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the hearing officer's decision, section 28-32-15 notwithstanding, by serving on the ~~commissioner~~ director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the ~~commissioner~~ director and to the hearing officer who rendered the decision. Neither the ~~commissioner~~ director nor the court may stay the decision pending decision on appeal. Within ~~fifteen~~ twenty days after receipt of the notice of appeal, the ~~commissioner~~ director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the ~~commissioner~~ director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the ~~commissioner~~ director or hearing officer. The court may direct that the matter be returned to the ~~commissioner~~ director or hearing officer for rehearing and the presentation of additional evidence.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 395

SENATE BILL NO. 2345
(Senators Traynor, Tennefos)
(Representative Mahoney)

INCLEMENT WEATHER VEHICLE LIGHTS

AN ACT to amend and reenact section 39-21-01 of the North Dakota Century Code, relating to the display of vehicle lights during inclement weather.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-01 of the North Dakota Century Code is amended and reenacted as follows:

39-21-01. When lighted lamps are required. ~~Every~~ Subject to exceptions with respect to parked vehicles, every vehicle upon a highway within this state ~~at~~ must display lighted lamps and illuminating devices as required in this chapter for different classes of vehicles as follows:

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise~~, and at~~;

2. At any time when it is raining, snowing, sleeting, or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead; or

3. At any other time when~~, due to~~ visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light ~~or unfavorable atmospheric conditions, persons and vehicles~~ to render a person or vehicle on the highway ~~are not~~ clearly discernible at a distance of one thousand feet [304.8 meters] ahead ~~must display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles~~. Stoplights, turn signals, and other signaling devices must be lighted as prescribed for the use of such devices.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 396

SENATE BILL NO. 2534
(Senators Krauter, O'Connell)
(Representative Kerzman)

VEHICLE SAFETY CHAINS AND BRAKES

AN ACT to amend and reenact subsection 3 of section 39-21-32 and section 39-21-44.2 of the North Dakota Century Code, relating to vehicle brake equipment and safety chain connections between vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-21-32 of the North Dakota Century Code is amended and reenacted as follows:

3. Every trailer or semitrailer when operated upon a highway at a speed in excess of ~~fifteen~~ twenty-five miles [~~24.14~~ 40.23 kilometers] per hour must be equipped with safety chains or brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes must be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes ~~shall be~~ are automatically applied.

SECTION 2. AMENDMENT. Section 39-21-44.2 of the North Dakota Century Code is amended and reenacted as follows:

39-21-44.2. Drawbar or connection between vehicles - Precautions required. The drawbar or other ~~connection~~ coupling device between ~~any two~~ vehicles, one of which is towing or drawing the other on a highway, must include safety chains connecting the vehicles. The drawbar or other coupling device, and the safety chains, must be of ~~such~~ a design, strength, and construction so as to prevent the unintentional uncoupling of the vehicles. The safety chain requirement of this section does not apply to:

1. A fifth-wheel coupling device; or
2. A vehicle towing an implement of husbandry or an implement of husbandry towing a vehicle, when operated at a speed not exceeding twenty-five miles [40.23 kilometers] per hour.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 397

SENATE BILL NO. 2120
(Transportation Committee)
(At the request of the Parks and Tourism Department)

SNOWMOBILE FUND

AN ACT to amend and reenact section 39-24-05 of the North Dakota Century Code, relating to the disposition of snowmobile registration and trail tax fees and providing for an annual transfer of highway tax distribution fund moneys to the snowmobile fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **39-24-05. Disposition of registration fees** and trail tax - Transfer from highway tax distribution fund. Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on thirty gallons of motor vehicle fuel multiplied by the number of snowmobiles registered under this chapter must be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The parks and tourism department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities and programs.

Approved April 12, 1993
Filed April 12, 1993

[1] NOTE: Section 39-24-05 was also amended by section 8 of House Bill No. 1400, chapter 80.

CHAPTER 398

SENATE BILL NO. 2123
(Natural Resources Committee)
(At the request of the Parks and Tourism Department)

SNOWMOBILE NONREGISTRATION PENALTY

AN ACT to amend and reenact section 39-24-11 of the North Dakota Century Code, relating to penalties for nonregistration of snowmobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **39-24-11. Penalties.** Any person who violates subdivision b, c, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of ~~twenty-five~~ fifty dollars. ~~A person who operates an unregistered snowmobile on land owned, leased, or managed by the parks and tourism department must be assessed a fee of fifty dollars; however, if~~ If the person provides proof of registration since the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

Approved April 7, 1993
Filed April 8, 1993

[1] NOTE: Section 39-24-11 was also amended by section 11 of House Bill No. 1400, chapter 80.

CHAPTER 399

SENATE BILL NO. 2121
(Transportation Committee)
(At the request of the Parks and Tourism Department)

ALL-TERRAIN VEHICLE LIGHTS

AN ACT to amend and reenact section 39-29-09 of the North Dakota Century Code, relating to operation of all-terrain vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

39-29-09. Operation of all-terrain vehicles.

1. A person may not operate an all-terrain vehicle on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in this chapter. Except in emergencies, a person may not operate an all-terrain vehicle within the right of way of any controlled access highway.

2. The operator of an all-terrain vehicle may make a direct crossing of a street or highway only if:

   a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

   b. The all-terrain vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

   c. The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

   d. In crossing divided highway, the crossing is made only at an intersection of the highway with another public street or highway.

3. A person may not operate an all-terrain vehicle unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the ~~highway commissioner~~ director of the department of transportation, except when under the direct supervision of an all-terrain vehicle instructor teaching a certified all-terrain vehicle safety training course, the requirement for a headlamp and taillamp may be waived.

4. The emergency conditions under which an all-terrain vehicle may be operated other than as provided by this chapter are only those that render the use of an automobile impractical under the conditions and at the time and location in question.

5. A person may not operate an all-terrain vehicle in the following ways, which are declared to be unsafe and a public nuisance:

   a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.

   b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.

   c. While under the influence of intoxicating liquor or a controlled substance.

   d. Without a lighted headlamp and taillamp except when used by an all-terrain vehicle instructor during a certified all-terrain vehicle safety training course.

   e. In any tree nursery or planting in a manner which damages growing stock.

   f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the all-terrain vehicle's exhaust system.

   g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of such signs, at or on all gates through the fence or enclosure.

6. Except as provided in section 39-29-10, a person may not operate an all-terrain vehicle without having in possession a valid driver's license or permit.

7. When an all-terrain vehicle is operated within the right of way of any road, street, or highway, during times or conditions that warrant the use of lights by other motor vehicles, the all-terrain vehicle must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the all-terrain vehicle.

8. A person may not operate an all-terrain vehicle within the right of way of any highway while towing a sled, skid, or other vehicle, unless the object towed is connected to the all-terrain vehicle by a hinged swivel and secure hitch.

9. Helmet required. No person under the age of eighteen may operate, ride, or otherwise be propelled on an all-terrain vehicle unless the person wears a safety helmet meeting United States department of transportation standards.

10. Passenger restrictions. No operator of an all-terrain vehicle may carry a passenger while operating.

Approved February 16, 1993
Filed February 16, 1993

CHAPTER 400

SENATE BILL NO. 2122
(Natural Resources Committee)
(At the request of the Parks and Tourism Department)

ALL-TERRAIN VEHICLE NONREGISTRATION PENALTY

AN ACT to amend and reenact section 39-29-12 of the North Dakota Century Code, relating to penalties for failure to register an all-terrain vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-29-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **39-29-12. Penalties.** Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 is an infraction, for which a fee of ~~twenty five~~ fifty dollars must be assessed~~; however, if the violation occurs on land owned, leased, or managed by the parks and tourism department a fee of fifty dollars must be assessed~~. If the person provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

Approved April 7, 1993
Filed April 8, 1993

[1] NOTE: Section 39-29-12 was also amended by section 16 of House Bill No. 1400, chapter 80.

MUNICIPAL GOVERNMENT

CHAPTER 401

HOUSE BILL NO. 1347
(Representative Kretschmar)
(Senator O'Connell)

POLITICAL SUBDIVISION RESTRUCTURING

AN ACT to provide for optional, advisory study by local citizens and leaders of statutory tools to adapt their local government structure and operation to local needs and resources, and to prepare for maximum effectiveness, creativity, and efficiency in future local governance; to create and enact two new chapters to title 11, two new sections to chapter 11-05, a new section to chapter 11-06, a new section to chapter 11-09.1, a new section to title 40, a new section to chapter 40-05.1, two new sections to chapter 40-49, a new chapter to title 40, and three new chapters to title 54 of the North Dakota Century Code, relating to optional tools for restructuring local governance including joint powers agreements, options for combining or separating elective county offices or redesignating county offices as elective or appointive, options for sharing offices among counties and among other local governments, options for broader participation in county and city home rule, procedures for optional transfers of local government powers or functions to counties, changes in county lines, county consolidation, and procedures for increasing or decreasing the number of members of city governing boards and city park commissioners, for combining boards of park commissioners, and for dissolving a city park district; to amend and reenact sections 11-05-02, 11-05-04, 11-05-05, 11-05-07, 11-05-25, 11-05-26, 11-05.1-01, 11-05.1-03, 11-05.1-04, 11-05.1-06, 11-08-02.1, 11-08-05, 11-09-03, 11-09-07, 11-09-48, 11-09.1-02, 11-09.1-03, 11-09.1-04, subsection 3 of section 11-09.1-05, sections 11-10-02, 40-04.1-01, 40-04.1-02, 40-05.1-01, 40-05.1-03, 40-05.1-04, 40-08-03, 40-08-04, 40-09-01, 40-09-04, 40-10-02, 40-12-01, 40-14-04, 40-49-05, and 54-40-08 of the North Dakota Century Code and to amend and reenact section 10 of chapter 326 and sections 4, 8, and 9 of chapter 442 of the 1991 Session Laws of North Dakota, relating to procedures for adopting the consolidated office and county manager forms of county government, the city manager plan, county and city home rule, and county consolidation, joint powers agreements, the removal of the minimum population requirement for adopting city home rule, membership on the governing bodies of cities and city park boards, and appointive offices in council cities; and to repeal sections 11-05-01, 11-05-03, 11-05-08, 11-05-10, 11-05-11, 11-05-11.1, 11-05-12, 11-05-13, 11-05-14, 11-05-16, 11-05-17, 11-05-18, 11-05-19, 11-05-20, 11-05-21, 11-05-22, 11-05-23, 11-05-24, 11-05-27, 11-06-02, 11-06-05, 11-08-02, 11-09-02, 11-09.1-08, 40-05.1-09, 40-08-03.1, 40-08-03.2, 40-08-04.1, 40-08-06.1, and 54-40-07 of the North Dakota Century Code and section 5 of chapter 326 and section 6 of chapter 442 of the 1991 Session Laws of North Dakota, relating to procedures for county consolidation and changes in county lines, membership on the governing bodies of cities, and clarification of the authority of political subdivisions to enter into joint powers agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. FLEXIBLE TOOLS FOR EFFECTIVE FUTURE LOCAL GOVERNANCE - LEGISLATIVE INTENT.

1. The legislative assembly determines that:

   a. North Dakota communities face an uncertain future, within an environment of diverse economic, social, and demographic circumstances. Each community is subject to a unique interplay of these critical circumstances, including location, the quality and character of the economic base, the mix of human and natural resources, and the leadership qualities of institutions and citizens. Some communities are thriving economically and are able to provide more jobs, increased personal income, a broader tax base, and generally prosperous environment from which to provide local government functions and services for local citizens. Other communities are experiencing declining populations, a declining retail sector, fewer job opportunities, and a shrinking tax base from which to provide these functions and services;

   b. The resolution of many of the important, increasingly complex issues facing communities will depend on each community's capacity for assessing its current and prospective challenges and opportunities, and on effective local leadership and local governance, open communication, citizen involvement, positive attitudes, and community-wide respect for diverse viewpoints, which must be considered in the larger environment of changing conditions for which local governments must be responsive;

   c. There is a common need for addressing the future of local governance by permitting and encouraging local citizens and leaders to initiate study, cooperation, and adaptation in local governance in recognition of the diverse circumstances and resources of North Dakota communites;

   d. No one, common vision of local government will work for all North Dakota communities because there is diversity in local thinking about the future of local government among different communities; and

   e. Local citizens and leaders need the flexibility of a variety of tools for renovating the structure and processes of their local governments in ways that build local capacity to identify the needs of the community, to use available resources in effective ways, and to participate in the development and implementation of plans for overcoming barriers to healthy community life.

2. It is the purpose of this Act to provide tools that enable local citizens and leaders to:

   a. Analyze their current and prospective community challenges and opportunites;

   b. Study and analyze their capacity for effective future local governance and, in their discretion, to collectively reshape their local governance in ways that best serve their needs and provide effective,

creative, and efficient local government functions and services in the future; and

c. Be creative and flexible in making informed decisions to improve the structure and processes of local government in building the future social and economic environment of the community.

SECTION 2. Advisory study of local governance options. An advisory study committee may be established under this chapter to provide local citizens and leaders with the means for fully and adequately studying options available for positioning their local governments for effective, creative, and efficient service in the future, in a manner suited to the economic, social, geographic, demographic, and other circumstances influencing the needs and resources of local communities. An advisory study committee is encouraged to prepare a comprehensive program for the performance of local government functions and the furnishing of local government services within the jurisdiction of the governing body or cooperating governing bodies that established the committee. In its study, the committee may consider:

1. The need for maintaining citizen access to, control of, and participation in local government;

2. The existing land use within the area, including the location of highways and natural geographic barriers to, and routes for, transportation;

3. The need for organized local government functions, services, and controls; the present cost and adequacy of local government functions, services, and controls; probable future needs for those functions, services, and controls; and the probable effect of alternative courses of action on the cost and adequacy of local government functions, services, and controls;

4. The trends in population density and distribution, and the potential or likelihood for significant growth or decline;

5. The tax base and other factors bearing on the capacity for local government to provide essential functions and services necessary to the general welfare of local citizens;

6. The boundaries of existing units of local government;

7. Data necessary for analyzing the strengths, weaknesses, challenges, and opportunities that are unique to the community; and

8. Other factors that may affect the provision of local government functions, services, and controls.

Local advisory study committee.

1. The governing body or electors of a county, city, city park district, township, school district, or any other political subdivision of this state may establish an advisory committee to study the existing form and powers of that political subdivision for comparison with other forms and powers available under the laws of this state. A local advisory study committee is established:

   a. By a majority vote of the governing body; or

b. By a petition signed by ten percent or more of the total number of qualified electors of the political subdivision voting for governor at the most recent gubernatorial election and submitted to the governing body.

2. Notwithstanding subsection 1, an election on the question of establishing a five-member advisory study committee for a county or city must be held at the next regular election in the county or city if five years have elapsed since the latter of:

a. The effective date of this Act;

b. The date of the most recent election held on the question of establishing an advisory study committee pursuant to this subsection; or

c. The date of issue of a written report prepared for a comprehensive study and analysis of the cooperative and restructuring options available to the county or city conducted by the governing body, an advisory study committee established pursuant to this section, a home rule charter commission, or through another study process for which a written report was prepared.

3. The question of establishing an advisory study committee pursuant to subsection 2 requires an affirmative vote of a majority of those voting on the question for passage.

4. The governing body shall appoint the members of the advisory study committee and set the duration of the committee. The members are not entitled to receive compensation, but may receive actual and necessary expenses incurred in the performance of official duties as determined by the governing body.

5. The governing body may provide office and meeting space and legal, clerical, facilitation, training, and other assistance to the study committee, and may appropriate funds in its final budget, or expend any unexpended balances in its general fund otherwise designated for current expenditure, for the necessary expenses of the advisory study committee. The committee, with the approval of the governing body, may:

a. Employ and fix the compensation and duties of necessary staff;

b. Contract and cooperate with other individuals and public or private agencies considered necessary for assistance, including institutions of higher education;

c. Establish advisory subcommittees that may include persons who are not members of the study committee;

d. Hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the committee's purpose, progress, conclusions, and recommendations;

e. Cooperate with a like committee established pursuant to this section by another political subdivision in the conduct of the study. A

cooperative study does not preclude a study committee from making separate recommendations to the governing body; and

f. Do any other act consistent with and reasonably required to perform its advisory function.

Cooperative advisory study committee.

1. The governing bodies of any two or more political subdivisions, including any combination of counties, cities, city park districts, townships, school districts, or other political subdivisions, may establish an advisory committee to study the potential for cooperative or combined efforts for providing local government functions and services. A cooperative advisory study committee is established:

   a. By execution of a joint powers agreement between participating political subdivisions or by joint resolution pursuant to separate majority votes of each participating governing body; or

   b. By petitions signed by ten percent or more of the total number of qualified electors of each affected political subdivision voting for governor at the most recent gubernatorial election and submitted to the governing bodies.

2. The composition and duration of the advisory study committee is as prescribed in the joint powers agreement, resolutions of the governing bodies, or petitions. However, the governing bodies may agree, by joint resolution, to limit the duration or composition of the advisory study committee created by petition pursuant to subdivision b of subsection 1. Any vacancy may be filled as prescribed in the agreement, resolution, or petitions or, if not prescribed, by the governing body that was represented by the person vacating the position.

3. A governing body may agree to provide office and meeting space and legal, clerical, facilitation, training, and other assistance to the study committee, and may appropriate funds in its final budget, or expend any unexpended balances in its general fund otherwise designated for current expenditure, for the necessary expenses of the advisory study committee. The committee, with the approval of the governing body, may:

   a. Employ and fix the compensation and duties of necessary staff;

   b. Contract and cooperate with other individuals and public or private agencies considered necessary for assistance, including institutions of higher education;

   c. Establish advisory subcommittees that may include persons who are not members of the study committee;

   d. Hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the committee's purpose, progress, conclusions, and recommendations; and

   e. Do any other act consistent with and reasonably required to perform its advisory function.

Advisory recommendations. A local or cooperative advisory study committee established for one or more political subdivisions may recommend that a local governing body or the electors pursue any course of action permitted by law or home rule charter for that political subdivision. The committee may recommend:

1. With respect to a county:

   a. Execution of a joint powers agreement between the county and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to section 49 of this Act or as otherwise specifically provided by law, or an agreement between the county and a tribal government pursuant to chapter 54-40.2.

   b. Exercise of the county's general authority to contract pursuant to section 11-10-01 and any other law, including service agreements with public or private parties under the terms and conditions of the agreements.

   c. Combination or separation of any elective or appointive county office and corresponding functions, or redesignation of any county office as elective or appointive, pursuant to section 3 of this Act.

   d. Change in the number of county commissioners pursuant to chapter 11-12.

   e. Establishment of a county home rule charter commission for initiating the adoption of a home rule charter or the amendment or repeal of a home rule charter pursuant to chapter 11-09.1, or the adoption, amendment, or repeal of ordinances for implementing a home rule charter. The recommendation may include a specific nonbinding proposal or draft for a home rule charter or amendment to a home rule charter.

   f. Adoption of the consolidated office form of county government pursuant to chapter 11-08.

   g. Adoption of the county manager form of county government pursuant to chapter 11-09.

   h. Use of other statutory tools relating to social and economic development, land use, transportation and roads, health, law enforcement, administrative and fiscal services, recording and registration services, educational services, environmental quality, water, sewer, solid waste, flood relief, parks and open spaces, hospitals, public buildings, or other county functions or services, including creation of cooperative county job development authorities pursuant to section 11-11.1-03, multicounty health units pursuant to sections 23-14-01.1 through 23-14-01.6, regional planning and zoning commissions pursuant to section 11-35-01, boards of joint county park districts pursuant to chapter 11-28 or a combination of boards of park commissioners with a city pursuant to section 48 of this Act, or multicounty social service districts pursuant to chapter 50-01.1.

i. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

j. Exercise of county options with respect to register of deed services and clerk of district court services pursuant to sections 11-10-02 and 11-17-11.

k. Sharing of elective or appointive county officers with other counties, cities, or other political subdivisions pursuant to section 4 of this Act.

l. Initiation of the multicounty home rule charter process or the amendment or repeal of a multicounty home rule charter pursuant to section 22 of this Act, or the adoption, amendment, or repeal of ordinances to implement the charter. The recommendation may include a specific nonbinding proposal or draft for a multicounty home rule charter.

m. Initiation of the county-city home rule process or the amendment or repeal of a county-city home rule charter pursuant to section 51 of this Act, or the adoption, amendment, or repeal of ordinances to implement the charter. The recommendation may include a specific nonbinding proposal or draft for a county-city home rule charter.

n. Transfer of a power or function of another political subdivision to the county pursuant to section 52 of this Act.

o. Creation of a county consolidation committee pursuant to chapter 11-05.1.

p. That any other action be taken that is permitted by law.

q. That no action be taken.

2. With respect to a city:

a. Execution of a joint powers agreement between the city and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to section 49 of this Act or as otherwise specifically provided by law, or an agreement between the city and a tribal government pursuant to chapter 54-40.2.

b. Exercise of the city's general authority to contract pursuant to section 40-05-01 and any other law, including service agreements with public or private parties under the terms and conditions of the agreements.

c. Combination of city officers pursuant to section 40-14-04 or 40-15-05 or the sharing of officers with other cities, counties, or other political subdivisions pursuant to section 4 of this Act.

d. An increase or decrease in the number of members of the governing body of a city pursuant to section 36 of this Act.

e. Establishment of a city home rule charter commission for initiating the adoption of a home rule charter or the amendment or repeal of a home rule charter pursuant to chapter 40-05.1, or the adoption, amendment, or repeal of ordinances for implementing a home rule charter. The recommendation may include a specific nonbinding proposal or draft for a city home rule charter or amendment to a home rule charter.

f. Adoption of the commission form of city government pursuant to chapter 40-04.

g. Adoption of the modern council form of city government pursuant to chapter 40-04.1.

h. Adoption of the city manager plan pursuant to chapter 40-10.

i. Sharing an appointive city officer and function with another city, the county, or another political subdivision pursuant to section 4 of this Act.

j. Initiation of the multicity home rule process or the amendment or repeal of a multicity home rule charter pursuant to section 31 of this Act, or the adoption, amendment, or repeal of ordinances to implement the charter. The recommendation may include a specific nonbinding proposal or draft for a multicity home rule charter.

k. Initiation of the county-city home rule process or the amendment or repeal of a county-city home rule charter pursuant to section 51 of this Act, or the adoption, amendment, or repeal of ordinances to implement the charter. The recommendation may include a specific nonbinding proposal or draft for a county-city home rule charter.

l. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

m. Use of other statutory tools for social and economic development, land use, transportation, health, fire and police protection, street construction and maintenance, assessment, financing, accounting, legal, environmental quality, water, sewer, solid waste, flood relief, parks and open spaces, hospitals, public buildings, or other city functions or services, including the creation of cooperative city job development authorities pursuant to section 40-57.4-03.

n. Transfer of a power or function of the city to the county pursuant to section 52 of this Act.

o. Consolidation of cities pursuant to chapter 40-53.2.

p. Dissolution of a city pursuant to chapter 40-53.1.

q. That any other action be taken that is permitted by law.

r. That no action be taken.

3. With respect to a township:

a. Execution of a joint powers agreement between the township and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to section 49 of this Act or as otherwise specifically provided by law, or an agreement between the township and a tribal government pursuant to chapter 54-40.2.

b. Exercise of the township's general authority to contract pursuant to section 58-03-01 and any other law, including service agreements with public or private parties under the terms and conditions of the agreements.

c. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

d. Combination of the offices of township clerk and treasurer pursuant to section 58-05-02 or the sharing of officers with other townships or other political subdivisions pursuant to section 4 of this Act.

e. An increase in the number of board of township supervisors from three to five pursuant to section 58-04-02.1.

f. Contract with the county, another political subdivision, or any individual for assessor services pursuant to section 58-05-02.

g. Consolidation of boards of township officers pursuant to chapter 58-05.1.

h. Transfer of a power or function of the township to the county pursuant to section 52 of this Act.

i. Creation of an organized civil township pursuant to chapter 58-02.

j. Division or annexation of a township pursuant to chapter 58-02.

k. Dissolution of the township pursuant to chapter 58-02.

l. That any other action be taken that is permitted by law.

m. That no action be taken.

4. With respect to a city park district:

a. Execution of a joint powers agreement between the city park district and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to section 49 of this Act or as otherwise specifically provided by law, or an agreement between the city park district and a tribal government pursuant to chapter 54-40.2.

b. Exercise of the city park district's general authority to contract pursuant to section 40-49-04 and any other law, including service agreements with public or private parties under the terms and conditions of the agreements.

c. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

d. An increase or decrease in the number of board members pursuant to section 47 of this Act.

e. Transfer of a power or function of the city park district to the county pursuant to section 52 of this Act.

f. Combination of the city board of parks commissioners with other city or county boards of park commissioners pursuant to section 48 of this Act.

g. Sharing of officers with other city park districts or other political subdivisions pursuant to section 4 of this Act.

h. Dissolution of the city park district pursuant to section 47 of this Act.

i. That any other action be taken that is permitted by law.

j. That no action be taken.

5. With respect to a school district:

a. Execution of a joint powers agreement between the school district and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to section 49 of this Act or as otherwise specifically provided by law, including the exercise of the general powers to make contract for joint educational endeavors pursuant to section 15-47-32, or an agreement between the school district and a tribal government pursuant to chapter 54-40.2.

b. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

c. An increase or decrease in the number of school board members pursuant to section 15-28-01.

d. A cooperative arrangement pursuant to chapter 15-27.7.

e. Sharing of officers with other school districts or other political subdivisions pursuant to section 4 of this Act.

f. School district restructuring, annexation, or reorganization pursuant to chapter 15-27.6, 15-27.2, or 15-27.3.

g. Transfer of a power or function of the school district to the county pursuant to section 52 of this Act.

h. That any other action be taken that is permitted by law.

i. That no action be taken.

6. With respect to other political subdivisions, including rural ambulance service districts, rural fire protection districts, irrigation districts, hospital districts, soil conservation districts, and recreation service districts:

   a. Execution of a joint powers agreement between the political subdivision and one or more other political subdivisions or the state for the cooperative or joint administration of any service or function pursuant to section 49 of this Act or as otherwise specifically provided by law, or an agreement between the political subdivisions and a tribal government pursuant to chapter 54-40.2.

   b. Participation in a community or leadership development, assessment, education, planning, or training program offered by any public or private agency, institution, or organization.

   c. Sharing of officers with other political subdivisions pursuant to section 4 of this Act.

   d. Transfer of a power or function of the political subdivision to the county pursuant to section 52 of this Act.

   e. That any other action be taken that is permitted by law.

   f. That no action be taken.

SECTION 3. A new chapter to title 11 of the North Dakota Century Code is created and enacted as follows:

County officer combination, separation, and redesignation options.

1. A county may, without requiring local citizens to permit county home rule powers:

   a. Combine any elective county office with one or more functionally-related, elective or appointive county offices;

   b. Separate an elective county office into two or more elective or appointive offices; or

   c. Redesignate an elective county office as an appointive office or an appointive office as an elective office.

2. A combination or separation of any elected or appointed county office may include the reassignment of any statutory function of that office or service provided by that office, but may not diminish the general responsibility of county government to perform any function or provide any service that is required by law to be performed or provided by county government.

3. This option is available in addition to, or in lieu of, other county structural options authorized under title 11, unless a specific mandate for combining or separating particular county offices is otherwise provided by law. The office of county judge is excluded from the application of this chapter.

Methods of accomplishing office combination, separation, or redesignation of elective or appointive status. The combination or separation of elective county offices, or redesignation of a county office as elective or appointive, may be accomplished:

1. By resolution of the board of county commissioners, subject to the right of referendum in the county electors. The board of county commissioners may by a majority vote adopt a preliminary resolution incorporating a proposed plan for combining or separating county offices, or redesignating a county office as elective or appointive. The board shall cause the complete text of the proposed plan to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold public hearings and community forums or use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose, conclusions, and recommendations of the plan. Within two years after the adoption of the preliminary resolution, the board of county commissioners may by final resolution approve the plan or amend the plan and approve it for implementation according to its terms. The final resolution may be referred to the qualified electors of the county by a petition protesting the plan. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor, or functional equivalent of that office, before four p.m. on the thirtieth day after the final resolution is adopted. Within ten days after the filing of the petition, the county auditor shall examine the petition and ascertain from the voter list whether the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within ten days after the county auditor declares the insufficiency. The final resolution is suspended upon a determination by the county auditor that the petition was timely filed and contains the signatures of a sufficient number of qualified electors. The board of county commissioners shall reconsider the referred resolution, and if it does not repeal the resolution in its entirety, shall submit the resolution to a vote of the qualified electors of the county at the next regular election. The county auditor shall cause the complete text of the resolution to be published in the official newspaper of the county, not less than two weeks nor more than thirty days, before the date of the election. If a majority of the qualified electors voting approves the resolution, the plan incorporated in the resolution is effective and becomes operative according to its terms as if it had not been suspended.

2. By initiative of county electors. A petition signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election may be submitted to the board of county commissioners, calling upon the board to submit to the electors the question of adopting a plan described in, or annexed to, the petition. The county auditor, or the functional equivalent of that officer, shall examine the petition and ascertain from the voter list whether or not the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of

an amended petition within thirty days after the county auditor declares the insufficiency. When a plan for the combination or separation of county offices or redesignation of county offices as elective or appointive is proposed pursuant to this subsection, the board of county commissioners shall submit the proposed plan to a vote of the qualified electors of the county at a primary or general election not less than sixty days nor more than two years, as specified in the petition, after determining that the petition is sufficient. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed plan. The board shall cause the complete text of the proposed plan to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately preceding the date of the election. The board of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose, conclusions, and recommendations of the plan. If a majority of the qualified electors voting on the proposed plan approves the question of its adoption, the plan is effective according to its terms.

Analysis required - Contents of plan - Limitations.

1. A proposed plan for combining or separating county elective offices, or redesignating a county office as elective or appointive, must be based on an analysis of each affected office, which may include an analysis of:

   a. The existing office organization, functions, and procedures established for providing governmental services;

   b. The proposed office organization, functions, and procedures; and

   c. How the proposal may improve the effectiveness and efficiency of county government and its responsiveness and accountability to local citizens.

2. The analysis may be performed as part of a study process initiated pursuant to section 2 of this Act.

3. A proposed plan for combining or separating county elective offices, or redesignating a county office as elective or appointive, may include provision for:

   a. The selection, powers, duties, functions, qualifications and training, terms, and compensation of the affected county offices, notwithstanding any other law;

   b. Selection, transfer, reassignment, or termination of personnel associated with each affected office;

   c. The election or appointment of a county manager, notwithstanding the provisions of chapter 11-09;

   d. Transition in implementation of the plan, including elements that consider the reasonable expectations of current officeholders such as

delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

e. The limited application or temporary implementation of the plan, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the plan on a date certain in the future, required reapproval of the plan by the electors at a future date, or a phased-in implementation of different components of the plan; and

f. Any other provision deemed necessary for combining or separating the offices or redesignating an office as elective or appointive.

4. A plan may not propose to diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term. The plan may not diminish the general responsibility of county government to perform any function or provide any service that is required by law to be performed or provided by county government.

5. A proposed plan may not diminish the future term of office, or redesignate an elected office as appointed, with respect to any person who, on the effective date of this Act, holds an elected county office and continues to hold that specific office for future terms on an uninterrupted basis. This subsection does not apply after January 1, 2002, or if the person holding the affected office consents in writing to the proposed plan and submits that written document prior to the scheduled implementation of the plan to a district judge serving the judicial district in which the county is located.

Plan implementation - Revision or abandonment of plan. One copy of the plan as approved must be filed with the district court for the county and one with the county auditor or functional equivalent to remain as a part of the county's permanent records. The board of county commissioners may take any action necessary to bring about an orderly transition in implementation of the plan, including any transfer of powers, records, documents, property, or funds which is consistent with the approved plan and necessary to place it into full effect. A plan, or part of a plan, adopted under this chapter may be revised or abandoned through the same procedure set forth in this chapter for adopting a plan.

Combination or separation of appointive offices. A plan for combining or separating appointive county offices may be proposed and adopted by resolution of the board of county commissioners.

SECTION 4. A new chapter to title 11 of the North Dakota Century Code is created and enacted as follows:

Multicounty combination of elective officers.

1. A county may combine any county elective office with one or more elective offices of one or more other counties for the purpose of sharing that combined office for the performance of functions and the provision of services among those counties. The procedures set forth in this chapter

apply to the combination, unless a specific procedure for combining particular elective county offices is otherwise provided by law.

2. A proposal for combining county elective offices may be accomplished:

   a. By the boards of county commissioners of each affected county by entering into a joint powers agreement incorporating a plan for the office combination, subject to the right of referendum in the electors of each of the counties; or

   b. By initiative of the electors of each affected county. A petition signed by ten percent or more of the total number of qualified electors of each county voting for governor at the most recent gubernatorial election may be submitted to the boards of county commissioners of each county, calling upon the boards to submit to the electors the question of adopting a plan described in, or annexed to, the petition.

3. A joint powers agreement entered into between counties for combining the functions of any county elective office pursuant to subdivision a of subsection 2 may be referred to the qualified electors of an affected county by a petition protesting the agreement. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor, or functional equivalent of that office, before four p.m. on the thirtieth day after the agreement is adopted. Within ten days after the filing of the petition, the county auditor shall examine the petition and ascertain from the voter list whether the petition contains the signatures of a sufficient number of qualified electors. Any insufficiencies may be cured by the filing of an amended petition within ten days after the county auditor declares the insufficiency. The implementation of the terms of the joint powers agreement is suspended upon a determination by the county auditor that the petition was timely filed and contains the signatures of a sufficient number of qualified electors. The board of county commissioners shall reconsider the referred agreement and, if the board does not terminate the agreement in its entirety, shall submit the question to a vote of the qualified electors of the county at the next regular election. The county auditor shall cause the complete text of the agreement to be published in the official newspaper of the county, not less than two weeks nor more than thirty days, before the date of the election. The boards of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. If a majority of the qualified electors voting in the county approve the question, the plan incorporated in the agreement is effective and becomes operative according to the terms of the agreement as if the agreement had not been suspended. If the electors of either county disapprove the question, the plan does not become effective.

4. The question of combination of the functions of elective county offices brought by petition pursuant to subdivision b of subsection 2 must be submitted by the boards of county commissioners to the electors in each of

the affected counties at a primary or general election not less than sixty days nor more than two years, as specified in the petition, after the petition is determined sufficient by each board. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed office-sharing arrangement. The board of county commissioners in each affected county shall cause the complete text of the proposed plan for combining offices to be published in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately preceding the date of the election. The boards of county commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. If a majority of the qualified electors of each county voting on the proposed plan approves the question of its adoption, the plan is effective according to its terms.

5. One copy of the plan as approved must be filed with the district court for each county and one with each county auditor or functional equivalent to remain as a part of each county's permanent records. The boards of county commissioners may take any action necessary to bring about an orderly transition in implementation of the plan.

6. A plan, or part of a plan, adopted pursuant to this chapter may be revised or terminated through another joint powers agreement or petition submitted pursuant to the procedure set forth in this chapter for adopting a plan, or pursuant to provisions for termination or revision provided in the original joint powers agreement.

Contents of plan - Limitations.

1. A joint powers agreement or plan for combining the function of county elective offices may specify:

   a. The offices to be combined;

   b. The selection, powers, duties, functions, qualifications and training, terms, candidate residency requirements notwithstanding section 11-10-04, and compensation of the combined office, and status of the office as elective or appointive;

   c. The manner of apportionment of the costs of the office;

   d. Procedures for the selection, transfer, reassignment, or termination of personnel associated with the affected offices;

   e. Procedures for the transfer of powers, records, documents, and property;

   f. Procedures for termination or modification of the arrangement;

   g. The process for transition in implementing the office combination, including delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

h. A process for the limited application or temporary implementation of the plan, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the plan on a date certain in the future, require reapproval of the plan by the electors at a future date, or a phased-in implementation of various components of the plan; and

i. Other provisions pertaining to the combined office that the affected boards of county commissioners deem necessary or advisable.

2. A proposed plan for combining the functions of county elective offices may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term. The plan may not diminish any general responsibility of county government to perform any function or provide any service that is required by law to be performed or provided by county government.

3. A proposed plan may not diminish the future term of office, or redesignate an elected office as appointed, with respect to any person who, on the effective date of this Act, holds an elected county office and continues to hold that specific office for future terms on an uninterrupted basis. This subsection does not apply after January 1, 2002, or if the person holding the affected office consents in writing to the proposed plan, and submits that written document prior to the scheduled implementation of the plan to a district judge serving the judicial district in which the county is located.

Office sharing among political subdivisions. A proposal for combining appointive offices of two or more counties, appointive offices of a county and another political subdivision, or appointive offices of two or more political subdivisions which are not counties, may be implemented through the execution of a joint powers agreement, unless a specific procedure for combining particular appointive offices is otherwise provided by law. The proposal is not subject to the referendum or election procedures of this chapter. A proposal for combining both elective and appointive offices of two or more counties, between a county and another political subdivision, or between two or more political subdivisions which are not counties, is subject to the referendum procedures of this chapter only in the county or other political subdivision of the elective office.

SECTION 5. AMENDMENT. Section 11-05-02 of the North Dakota Century Code is amended and reenacted as follows:

11-05-02. Board of county commissioners to submit consolidation plan to electorate. ~~Whenever~~ If a county consolidation plan is submitted to ~~a board~~ two or more boards of county commissioners pursuant to chapter 11-05.1, ~~the~~ each board of county commissioners shall submit the question of consolidation to the qualified electors of the county at ~~the next~~ a primary election ~~in the manner hereinafter provided~~ as specified by the county consolidation committee in conjunction with the election held in any other counties proposed to be affected by the plan.

SECTION 6. AMENDMENT. Section 11-05-04 of the North Dakota Century Code is amended and reenacted as follows:

11-05-04. Notice of election - How given. The county auditor of each of the counties affected shall ~~give notice of the election by publishing~~ publish once each week for at least two consecutive weeks prior to the election in the official newspaper of ~~his~~ the county a notice giving the date of the primary election, the hours during which the polls will be opened, a reference to the notice of the primary election for a statement of the places where the election will be held, ~~and~~ the names of the counties affected ~~by the petitions~~, and a fair and accurate summary of the consolidation plan. The notice ~~shall~~ must state ~~also~~ that the proposition to be voted upon will be:

~~Shall the county of _____ (name of the petitioning county) be consolidated and annexed to the county of _____ (name of the adjoining county).~~

~~or if the plans which have been filed ask that the territory be consolidated with and annexed to more than one county:~~

~~Shall that part of the county of _____ (name of the petitioning county) described as _____ (description of portion of petitioning county to be annexed as described in the plan) be consolidated with and annexed to the county of _____ (name of the adjoining county).~~ corporate existence and governments of the county of _____ and the county (or counties) of _____ be consolidated into one county government pursuant to the consolidation plan?

SECTION 7. AMENDMENT. Section 11-05-05 of the North Dakota Century Code is amended and reenacted as follows:

11-05-05. Form of ballot. The ballots used at an election held under the provisions of this chapter ~~shall~~ must be in substantially the following form:

~~Shall the county of _____ (name of the petitioning county) be consolidated with and annexed to the county of _____ (name of the adjoining county);~~

~~or if the plans which have been filed ask that the territory within the petitioning county be consolidated with and annexed to more than one county, in substantially the following form:~~

~~Shall that part of the county of _____ (name of the petitioning county) described as _____ (description of portion of petitioning county to be annexed as described in the plan) be consolidated with and annexed to the county of _____ (name of the adjoining county).~~ corporate existence and governments of the county of _____ and the county (or counties) of _____ be consolidated into one county government pursuant to the consolidation plan?

Below the question submitted ~~in either case~~, there ~~shall~~ must be printed:

Yes ☐
No ☐

SECTION 8. AMENDMENT. Section 11-05-07 of the North Dakota Century Code is amended and reenacted as follows:

11-05-07. Affirmative vote necessary to consolidate counties. ~~If fifty-five percent~~ A majority of the legal votes cast on the question of consolidation in each of the counties affected ~~shall be in favor of consolidation, all of the territory included within the established boundaries of the petitioning county shall be consolidated with and annexed to the adjoining county or counties described in the petition or petitions~~ is necessary for approval of a county consolidation plan.

SECTION 9. Two new sections to chapter 11-05 of the North Dakota Century Code are created and enacted as follows:

Officer elections. At the next succeeding general election after consolidation is approved by the voters and redistricting of the new county is accomplished pursuant to the consolidation plan, there must be elected for the new county all county officers provided for by general law or as prescribed in the approved consolidation plan, including members of the board of county commissioners. The terms for these offices begin on the first Monday in January next succeeding their election, or on another date as prescribed in the approved consolidation plan, at which time they replace all elected county officers of the previous counties. All appointive county officers are appointed by the officer or board upon which the power to appoint that officer is conferred.

Consolidated county. On the first Monday in January following the election of county officers, or on another date as prescribed in the approved consolidation plan, the affected counties are for all purposes a single county as prescribed in the consolidation plan. All rights, privileges, and franchises of each of the counties, and all assets and liabilities are deemed transferred to the new consolidated county. Any suit which may have been brought against a previous county may be brought, after consolidation, against the consolidated county.

SECTION 10. AMENDMENT. Section 11-05-25 of the North Dakota Century Code is amended and reenacted as follows:

11-05-25. Power of ~~adjoining~~ consolidated county to levy taxes ~~in petitioning county~~ to pay debts. ~~The~~ If authorized in the approved consolidation plan, the board ~~or boards~~ of county commissioners of the ~~adjoining~~ consolidated county ~~or counties shall have~~ has all the powers which the board of county commissioners of ~~the petitioning~~ a previous county had at the time of the consolidation, to levy taxes upon the property in the territory which, prior to the consolidation, constituted the ~~petitioning~~ previous county, for the purpose of paying the debts and obligations of the ~~petitioning~~ previous county in existence at the time of consolidation.

SECTION 11. AMENDMENT. Section 11-05-26 of the North Dakota Century Code is amended and reenacted as follows:

11-05-26. Board of county commissioners of ~~adjoining~~ consolidated county may issue evidences of indebtedness ~~for petitioning county~~. ~~The~~ If authorized in the approved consolidation plan, the board ~~or boards~~ of county commissioners of the ~~adjoining~~ consolidated county ~~or counties~~ may compromise debts and obligations of ~~the petitioning~~ a previous county ~~existing at the time of the consolidation~~ and may issue bonds or certificates of indebtedness in settlement or compromise of, or to fund, ~~such~~ those debts and obligations. Bonds or certificates issued under this section ~~shall~~ must bear upon their face a statement that the principal and interest to become due ~~thereon shall~~ may be paid only from taxes levied upon the property

within the territory which constituted the ~~petitioning~~ previous county prior to the consolidation.

SECTION 12. AMENDMENT. Section 11-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11-05.1-01. County consolidation committee ~~- Creation - Membership - Dissolution~~. ~~The board of county commissioners of any county may upon its own motion create a county consolidation committee and shall be required to create such committee whenever twenty percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last general election, shall petition the board of county commissioners to create such committee. The members of the committee shall be appointed by the board of county commissioners and shall consist of~~

1. Any two or more counties may create a county consolidation committee:

   a. By entering into a joint powers agreement or by joint resolution pursuant to separate majority votes of the participating boards of county commissioners; or

   b. By direct initiative through petitions signed by ten percent or more of the total number of qualified electors of each county voting for governor at the most recent gubernatorial election.

2. The composition of the committee is as prescribed in the joint powers agreement or joint resolution, or as the composition or manner for determining the composition is prescribed in the petition. However, the committee membership must include at least one resident of each incorporated city in ~~the~~ each county ~~and one additional resident of each county commissioner's district, plus not more than three additional members at large as shall be determined by the board of county commissioners. Vacancies upon the committee shall be filled in the same manner as members are originally appointed~~.

3. Any vacancy may be filled as prescribed in the agreement or resolution or, if not prescribed, by the board of county commissioners of the county that was represented by the person vacating the position.

4. The committee ~~shall have~~ has at least one hundred twenty days in which to consider ~~the question~~ and file its final report ~~but after~~. After one hundred twenty days the committee may be discharged by motion of ~~the~~ either board of county commissioners. ~~The word "committee" when used in this chapter shall mean the county consolidation committee.~~

SECTION 13. AMENDMENT. Section 11-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

11-05.1-03. Powers and duties - Contents of plan.

1. The committee, in studying and preparing a plan to consolidate the counties or change county lines, shall ~~have the following powers and duties:~~

~~1. To study or prepare a plan to consolidate the county with one or more adjoining counties or study and propose an alternative form of county government as authorized by law.~~

~~2. To hold meetings and hold public hearings to consider proposals which may be submitted by qualified electors of the county or adjoining counties or obtain public views upon plans prepared by the committee.~~

~~3. To publish once in one or more newspapers having general circulation in the county one week in advance the date and times of public hearings~~ consider and include in the plan as appropriate:

a. The fiscal impact of the proposed county consolidation or change in county lines and the economic viability of the proposed county or counties, including the costs of the proceedings to form the county or change county lines;

b. The comparative costs of providing services in the affected counties and the proposed county or counties;

c. The projected revenues available to the affected counties and the proposed county or counties;

d. The final boundaries of the proposed county or counties;

e. A procedure for the orderly and timely transfer of service functions and responsibilities from the affected counties to the proposed county or counties;

f. A method or plan and timetable for redistricting the proposed consolidated county, pursuant to the redistricting principles enumerated in chapter 11-07. The redistricting process in the case of a change in county lines is as provided in section 11-06-08;

g. The procedure and plan for equalization of the assets and liabilities of the affected counties, and procedures for negotiation and resolution of any subsequent disagreement regarding the equalization of assets and liabilities;

h. An adjustment of existing bonded indebtedness and other obligations in a manner that will provide for a fair and equitable burden of taxation for debt service;

i. The estimated taxes, assessments, or other authorized charges necessary in the proposed county to meet the liabilities in the first full fiscal year after the proposed county is formed;

j. The structure or form of county government and the selection, powers, duties, functions, qualifications and training, terms, and compensation of officers;

k. The application of the plan, if any, to each school district, city park district, and any other special taxing district within the affected counties;

l. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders such as compensation during an unexpired term of office and delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

m. The limited application or temporary implementation of the plan, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the plan on a date certain in the future, required reapproval of the plan by the electors at a future date, or a phased-in implementation of various components of the plan; and

n. Other considerations and provisions that the committee decides to include and which are consistent with state law.

2. The committee may:

a. Employ and fix the compensation and duties of necessary staff;

b. Contract and cooperate with other individuals and public or private agencies considered necessary for assistance, including institutions of higher education;

c. Establish advisory subcommittees that include, if desired, persons who are not members of the study committee;

d. Hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of its purpose, progress, conclusions, and recommendations; and

e. Draft a multicounty home rule charter as a charter commission pursuant to section 22 of this Act, in lieu of proceeding pursuant to the provisions of chapter 11-05.

SECTION 14. AMENDMENT. Section 11-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-05.1-04. Approval of consolidation plan. If the committee ~~shall approve~~ approves a consolidation plan, it ~~shall~~ must submit a report and a map showing the boundaries of the proposed county consolidation or change in county lines to the board of county commissioners of ~~the county and of~~ each affected ~~adjoining~~ county. The ~~reports~~ report may also be made available to all interested persons. When the ~~reports~~ report and ~~maps~~ map have been received by the respective boards of county commissioners, the ~~board~~ boards of county commissioners of ~~the~~ each county ~~to be consolidated and the board of county commissioners of all affected adjoining counties~~ shall act pursuant to ~~sections 11-05-04, 11-05-05, 11-05-06, 11-05-07, 11-05-08, 11-05-09, 11-05-10, 11-05-11, 11-05-12, 11-05-13, 11-05-14, 11-05-16, 11-05-17, 11-05-18, 11-05-19, 11-05-20, 11-05-21, 11-05-22, 11-05-23, 11-05-24, 11-05-25, 11-05-26, and 11-05-27~~ chapter 11-05 or 11-06.

SECTION 15. AMENDMENT. Section 11-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

11-05.1-06. Expenses. ~~Each~~ Except as otherwise provided by the implementing joint powers agreement, joint resolutions, or petitions, each member of the committee ~~shall~~ is entitled to receive from the county ~~his~~ the actual and necessary expenses incurred by ~~him~~ that member in attending scheduled meetings and in performance of ~~his~~ official duties in the same manner and amounts as members of the board of county commissioners, but shall receive no salary or compensation for services performed. All expenses of the committee ~~shall~~ must be paid from county funds after approval of ~~such~~ these expenses by the ~~board~~ boards of county commissioners in the same manner as other general county expenses.

SECTION 16. A new section to chapter 11-06 of the North Dakota Century Code is created and enacted as follows:

Boards of county commissioners to submit plan of county consolidation committee to electors. Notwithstanding sections 11-06-01 and 11-06-03, if a plan for changing county lines is submitted by a county consolidation committee to two or more boards of county commissioners pursuant to chapter 11-05.1, each board of county commissioners shall submit the question of the change in county lines to the qualified electors of the county at a general election as specified by the county consolidation committee within two years of submission of the plan. The election must be held in conjunction with the election held in any other county proposed to be affected by the plan. Sections 11-06-06 and 11-06-07 apply to the plan for change in county lines, unless the plan provides an alternative implementation date or arrangement for debts of the transferred area.

SECTION 17. AMENDMENT. Section 11-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

11-08-02.1. Board of county commissioners may submit plan. The question of the adoption of a consolidated office form of government may be submitted at the next primary election as provided by this chapter by the board of county commissioners ~~notwithstanding the provisions of chapter 11-05.1~~ by a resolution adopted by the affirmative vote of ~~not less than two-thirds~~ a majority of the entire board.

SECTION 18. AMENDMENT. Section 11-08-05 of the North Dakota Century Code is amended and reenacted as follows:

11-08-05. Vote required - ~~Change effective when - When elective officers retired~~ Effective date - Procedure for discontinuance. If ~~fifty-five percent~~ a majority of the votes cast on the question of the adoption of the county consolidated form of government are in favor ~~thereof~~ of that form, it ~~shall go into effect~~ becomes effective on the first day of January next succeeding ~~such~~ the election. All elected officers shall continue in office until their successors ~~have been~~ are appointed pursuant to the provisions of this chapter. The question of the discontinuance of the county consolidated office form of government may be submitted to the electors at the next primary election through the same procedures set forth in this chapter for adopting that form of government. On the first day of January following a vote to discontinue, the county reverts to the form of government of the county immediately preceding adoption of the consolidated office form of government, with all offices made appointive under this chapter subject to election at the last preceding general election, or to another optional form of county government adopted by the electors as provided by law.

SECTION 19. AMENDMENT. Section 11-09-03 of the North Dakota Century Code is amended and reenacted as follows:

11-09-03. Board of county commissioners may submit plan. The question of the adoption of any county manager form of government may be submitted ~~notwithstanding the provisions of chapter 11-05.1~~ to the qualified electors of the county at the next primary election by the board of county commissioners by a resolution adopted by the affirmative majority vote ~~of not less than sixty percent~~ of the entire board. ~~Such~~ The resolution ~~shall~~ must clearly designate which form of government ~~shall be~~ is submitted.

SECTION 20. AMENDMENT. Section 11-09-07 of the North Dakota Century Code is amended and reenacted as follows:

11-09-07. Vote required - ~~When form of government goes into effect - When official in office retired~~ Effective date. If ~~fifty-five percent~~ a majority of the votes cast on the question of adoption of a county manager form of government are in favor ~~thereof~~ of that form, it ~~shall go into effect~~ becomes effective on the first day of January next succeeding ~~such~~ the election or on a later date as may be designated in the plan or resolution. All elected ~~officials then in office whose positions will~~ offices no longer ~~be~~ filled by popular election ~~shall be retired~~ are abolished on the effective date.

SECTION 21. AMENDMENT. Section 11-09-48 of the North Dakota Century Code is amended and reenacted as follows:

11-09-48. Election as to retention of plan. At any time after any form of county managership has been in force in a county for a period of four years, the board of county commissioners may submit, and, when petitioned to do so at least ninety days before a primary election by at least twenty-five percent of the qualified electors of the county as determined by the total number of votes cast for the office of governor at the last general election, shall submit to the electors at a primary election the question of whether or not the county manager plan in force shall be retained. If ~~fifty-five percent~~ a majority of the legal votes cast on such question at the primary election shall be against retaining such plan, it shall cease to be operative on the first Monday in January next succeeding the primary election, and the county shall revert to the plan of government in force prior to the adoption of the county managership. Thereafter, the provisions of this chapter shall not be applicable in such county until after another compliance with its terms. When the petition has been filed, candidates for all county offices required under the plan in force prior to the adoption of the county managership may file nominating petitions. If ~~fifty-five percent~~ a majority of the legal votes cast on the question are against retaining the county manager plan, the candidates nominated at the primary election shall be voted upon at the general election, and officers shall be elected in accordance with the general election laws. The terms of office of all officers elected as provided in this section shall commence on the first Monday in January next succeeding the primary election.

SECTION 22. A new section to chapter 11-09.1 of the North Dakota Century Code is created and enacted as follows:

Multicounty home rule.

1. Two or more counties may draft and submit for adoption a multicounty home rule charter to the electors of each county pursuant to this section. The

other provisions of this chapter apply to a multicounty home rule charter, except as otherwise provided by this section.

2. The process for drafting and submitting a multicounty home rule charter may be initiated by:

   a. Separate motions by the boards of county commissioners of the participating counties;

   b. The execution of a joint powers agreement between participating counties; or

   c. A petition filed with each board of county commissioners of two or more counties and signed by ten percent or more of the total number of qualified electors of each county voting for governor at the most recent gubernatorial election.

3. Within sixty days after proceedings are initiated for a multicounty home rule charter, the boards of county commissioners shall enter into a joint powers agreement specifying the procedure for framing the charter, which may include the establishment of a single cooperative charter commission with membership representing each county. As an alternative, the boards of county commissioners in each affected county may establish a separate charter commission pursuant to section 11-09.1-02 to frame the charter in cooperative study with the charter commission of any other affected county. The charter commissions must submit a single joint report and proposed charter.

4. A charter commission, during its deliberation, may hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion on the subject of the proposed multicounty home rule charter, and may report periodically to the affected governing bodies on their progress. In preparing the charter, the charter commission may:

   a. Include any, or all, of the available powers enumerated in section 11-09.1-05, subject to the limitations of that section;

   b. Provide for adjustment of existing bonded indebtedness and other obligations in a manner that will provide for a fair and equitable burden of taxation for debt service;

   c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of the counties;

   d. Provide for the reorganization, abolition, or adjustment of boundaries of any existing boards, commissions, agencies, and special districts of the county government;

   e. Include provisions for transition in implementing the charter, including elements that consider the reasonable expectations of current officeholders such as delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

f. Include provision for the limited application or temporary implementation of the charter, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the charter on a date certain in the future, required reapproval of the charter by the electors at a future date, or a phased-in implementation of various components of the charter; and

g. Include other provisions that the charter commission elects to include and which are consistent with state law.

5. The proposed charter or accurate summary of the charter must be published in the official newspaper of each affected county, at least once during two different weeks within the thirty-day period immediately preceding the date of election.

6. If a majority of the qualified electors voting in each county on the charter votes in favor of the multicounty home rule charter, it is ratified and becomes the organic law of the multicounty area on the first day of January following the election or other effective date specified in the charter.

7. The amendment or repeal of a multicounty home rule charter may proceed pursuant to the amendment and repeal provisions of section 11-09.1-06 on a multicounty basis. A majority vote of the qualified electors voting in each county in the election is required to adopt any amendment of a multicounty charter. A majority vote of the qualified electors of only one or more participating counties is required to repeal a multicounty charter.

SECTION 23. AMENDMENT. Section 11-09.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-02. Charter commission - Membership - Preparation and submission of charter - Compensation and expenses - Publication. Within sixty days after proceedings have been initiated for a home rule charter, the board of county commissioners shall appoint a ~~five-member~~ charter commission, comprised of at least five members, to draft the charter, unless a petition proposing a charter pursuant to section 11-09.1-01 prescribes the composition of the commission or the manner by which the composition of the commission is to be determined. The board shall designate one of the charter commission members as chairman of the charter commission. The board shall set the compensation and expenses of charter commission members. The board, from its general funds, may furnish the charter commission with office space, clerical help, supplies, and legal and other assistance. The charter commission shall hold at least one public hearing on the proposed charter, and may use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the proposed charter. The commission shall prepare and submit the charter to the board of county commissioners within one year after appointment, unless the board allows additional time for submission of the charter. The charter must contain a list of county offices to be elected and any elected offices that will be eliminated or combined if the charter is adopted. The board of county commissioners shall publish the proposed charter once in the official newspaper of the county.

SECTION 24. AMENDMENT. Section 11-09.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-09.1-03. Submission of charter to electors. At least sixty days, but no more than two years, after ~~publication~~ submission of the charter to the board of county commissioners, the proposed charter must be submitted to a vote of the qualified electors of the county at ~~the next~~ a primary or general election. If the proposed charter has been submitted to a vote of the qualified electors of the county, the board of county commissioners may call a special election to resubmit the proposed charter to a vote of the qualified electors of the county, and the special election must take place at least sixty days after the call for the special election. The board may amend the proposed charter prior to its resubmission to the electors.

SECTION 25. AMENDMENT. Section 11-09.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. Ratification by majority vote - Supersession of existing charter and conflicting state laws - Filing of copies of new charter. If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election, and extends to all its county matters. The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. The charter may not authorize the enactment of ordinances to diminish the authority of a board of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. No ordinance of a home rule county shall supersede section 49-22-16. One copy of the charter as ratified and approved must be filed with the secretary of state, one with the clerk of district court for the county, and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

SECTION 26. AMENDMENT. Subsection 3 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election or pursuant to the county officer combination, separation, or redesignation procedures of section 3 of this Act. A home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term. Notwithstanding the other provisions of this subsection, a charter or ordinance or act of a governing body of a home rule county may not supersede any state law concerning the office or jurisdiction of the county court or county judge.

SECTION 27. AMENDMENT. Section 10 of chapter 326 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 10. AMENDMENT. Subsection 3 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election or pursuant to the county officer combination, separation, or redesignation procedures of section 3 of this Act. A home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term.

SECTION 28. AMENDMENT. Section 11-10-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to section 3 or 4 of this Act, must have the following officers:

1. One county auditor.
2. One register of deeds in counties having a population of more than six thousand.
3. One clerk of the district court.
4. One state's attorney.
5. One sheriff.
6. One county judge, except that the board of county commissioners of any two or more counties may enter into an agreement to provide for election of a judge or judges to serve the county courts of the counties entering the agreement.
7. One county treasurer.
8. One coroner.
9. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.
10. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the clerk of the district court must be the register of deeds, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. For a

county which has properly initiated the option and it is funded by the legislative assembly pursuant to section 11-17-11, the board of county commissioners may provide for the register of deeds services in any appropriate manner. Counties having a population of six thousand or less and exercising the option provided in section 11-17-11 may contract with the state court administrator for the provision of shared funding for register of deeds services. In counties having a population of twenty-five thousand or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty-five thousand, the clerk of district court must be clerk of county court unless the county has properly initiated the option and it is funded by the legislative assembly pursuant to section 11-17-11, in which case the county judge may determine that the clerk of district court may provide clerk services to the county court or appoint a clerk of county court. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge, and clerk of the district court, who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election ~~which~~ that occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 11-17-11.

SECTION 29. AMENDMENT. Section 40-04.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-04.1-01. City council - ~~Who constitutes~~ Membership **- Terms.** The governing body of a city operating under the modern council form of government ~~must be~~ is the city council, which ~~must be~~ is composed of ~~five~~ not less than four members, one of whom ~~must be~~ is the mayor, all elected at large or ~~a city council composed of seven, nine, or eleven members, at least three of whom must be elected~~ by wards~~, and at least three of whom, including the one serving as mayor must be elected at large~~. Candidates for the council shall run for either mayor or ~~councilman~~ council member but not both at the same time. ~~When a city first adopts a modern council form of government in cities electing five council members, the candidates having the three highest number of votes must be elected for a four-year term and the other two for a two-year term. In cities electing seven, nine, or eleven council members, the candidates, by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat, or the mayor's seat. A candidate seeking a ward seat must be a resident of such ward. When a city first adopts a modern council form of government in cities electing seven, nine, or eleven members, the elected mayor candidate and the elected candidates from the wards must be elected for a four-year term and the at-large elected candidates for a two-year term. Thereafter the~~ The terms of members of the council ~~must~~ shall be four years, or until their successors are elected and qualified. ~~The city governing body shall allow council members who were previously elected to continue to hold office until their term expires. In that case, council members from the odd-numbered wards and at least two at-large council members must be elected to a four-year term at the first election, with the remainder of the council members being elected to four-year terms at the next regular city election~~ However, the council shall establish by ordinance a procedure whereby one-half of all council

members, as nearly as is practicable, are elected biennially. The number of council members may be increased or decreased pursuant to section 36 of this Act.

SECTION 30. AMENDMENT. Section 40-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

40-04.1-02. Compensation of ~~councilmen~~ council members. The members of the council shall receive such compensation for their services as ~~shall be~~ is fixed by ordinance, but not more than the maximum provided for the members of the governing board under any other form of city government~~, except in the cities adopting the eleven-member modern council the maximum compensation shall be eighty-five dollars per month~~.

SECTION 31. A new section to chapter 40-05.1 of the North Dakota Century Code is created and enacted as follows:

Multicity home rule.

1. Two or more cities may draft and submit for adoption a multicity home rule charter to the electors of each city pursuant to this section. The other provisions of this chapter apply to a multicity home rule charter, except as otherwise provided by this section.

2. The process for drafting and submitting a multicity home rule charter may be initiated by:

   a. Separate motions by the governing bodies of the participating cities;

   b. The execution of a joint powers agreement between participating cities; or

   c. A petition filed with each governing body of two or more cities and signed by ten percent or more of the total number of qualified electors of each city voting for governor at the most recent gubernatorial election.

3. Within sixty days after proceedings are initiated for a multicity home rule charter, the boards of governing bodies shall enter into a joint powers agreement specifying the procedure for framing the charter, which may include the establishment of a single cooperative charter commission with membership representing each city. As an alternative, the governing bodies in each affected city may establish a separate charter commission pursuant to section 40-05.1-03 to frame the charter in cooperative study with the charter commission of any other affected city. The charter commissions must submit a single joint report and proposed charter.

4. The charter commission, during its deliberation, may hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion on the subject of the proposed multicity home rule charter, and may report periodically to the affected governing bodies on their progress. In preparing the charter, the charter commission may:

   a. Include any of the available powers enumerated in section 40-05.1-06;

b. Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of the cities;

d. Provide for the reorganization, abolition, or adjustment of boundaries of any existing boards, commissions, agencies, and special districts of the city governments, including city park districts;

e. Include provisions for transition in implementing the charter, including elements that consider the reasonable expectations of current officeholders or personnel such as delayed effective dates for implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

f. Include provision for the limited application or temporary implementation of the charter, including provisions that permit implementation on an experimental or pilot basis such as the expiration of the charter on a date certain in the future, required reapproval of the charter by the electors at a future date, or a phased-in implementation of various aspects of the charter; and

g. Include other provisions that the charter commission elects to include and which are consistent with state law.

5. The proposed charter or accurate summary of the charter must be published in the official newspaper of each affected city, at the expense of each city, at least once during two different weeks within the thirty-day period immediately preceding the date of election. However, a city with a population of one thousand or less may, instead of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city.

6. If a majority of the qualified electors voting in each city on the charter vote in favor of the multicity home rule charter, it is ratified and becomes the organic law of the cities on the first day of January following the election or other effective date specified in the charter.

7. The amendment or repeal of a multicity home rule charter may proceed pursuant to the amendment and repeal provisions of section 40-05.1-07 on a multicity basis. A majority vote of the qualified electors voting in each city in the election is required to adopt any amendment of a multicity charter. A majority vote of the qualified electors of only one or more participating cities is required to repeal a multicity charter.

SECTION 32. AMENDMENT. Section 40-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-01. Enabling clause. Any city ~~with a population of one hundred or more persons as determined by the last federal census and desiring to avail itself of the provisions of this chapter~~ may ~~proceed to~~ frame, adopt, amend, or repeal home rule charters as ~~herein~~ provided in this chapter.

SECTION 33. AMENDMENT. Section 40-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-03. Charter commission - Membership - Preparation and submission of charter - Compensation and expenses - Publication or distribution. ~~Where~~ Within sixty days after proceedings have been initiated for a home rule charter, the governing body of the city shall appoint a charter commission, composed of at least five members, to frame ~~such~~ the charter, unless a petition proposing a charter pursuant to section 40-05.1-02 prescribes the composition of the commission or the manner by which the composition of the commission is to be determined. The chairman of the charter commission shall be designated by the governing body and shall be a charter commission member. Compensation and expenses of commission members shall be as determined by the governing body. The governing body may furnish the charter commission with office space, clerical help, legal and other assistance, and supplies, and may appropriate and pay for same out of its general funds. The charter commission shall hold at least one public hearing on the proposed charter, and may use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the proposed charter. The commission shall prepare and submit the charter within one year after appointment, unless the governing body allows additional time for submission of the charter. The proposed charter shall then be published once in the city's official newspaper as provided in section 40-01-09. However, cities with a population of one thousand or less may, in lieu of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city. In the event a city does not publish the charter in a newspaper, it must still publish a notice of the election.

SECTION 34. AMENDMENT. Section 40-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-04. Submission of charter to electors. ~~Not earlier than~~ At least sixty days ~~nor later than six months after such publication or distribution~~, but no more than two years, after submission of the charter to the governing body of the city, the proposed charter ~~shall~~ must be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any primary or general election that is to be held within ~~such~~ that period of time, or at a special city election held concurrently with any primary or general election. If the proposed charter has been submitted to a vote of the qualified electors of the city, the governing body of the city may call a special election to resubmit the proposed charter to a vote of the qualified electors of the city, and the special election must take place at least sixty days after the call for the special election. The governing body may amend the proposed charter prior to its resubmission to the electors.

SECTION 35. AMENDMENT. Section 4 of chapter 442 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 4. AMENDMENT. Section 40-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-04. Submission of charter to electors. ~~Not earlier than~~ At least sixty days ~~nor later than six months after such publication or distribution~~, but no more than two years, after submission of the charter to the governing body of the city, the proposed charter must be submitted to a vote of the qualified electors of

the city at a regular or special city election, or at any statewide election that is held within that time, or at a special city election held concurrently with any statewide election. If the proposed charter has been submitted to a vote of the qualified electors of the city, the governing body of the city may call a special election to resubmit the proposed charter to a vote of the qualified electors of the city, and the special election must take place at least sixty days after the call for the special election. The governing body may amend the proposed charter prior to its resubmission to the electors.

SECTION 36. A new section to title 40 of the North Dakota Century Code is created and enacted as follows:

Change in number of members of city governing body - Election.

1. The process for increasing or decreasing the number of members of a city governing body pursuant to sections 40-04.1-01, 40-08-03, and 40-09-01, may be initiated:

   a. By resolution approved by a majority vote of the governing body of the city; or

   b. By a petition signed by ten percent or more of the total number of qualified electors of the city voting for governor at the most recent gubernatorial election and submitted to the governing body of the city.

2. The governing body of the city shall submit the question of increasing or decreasing the number of members of the city governing body to the electors of the city at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 1. The question requires an affirmative vote of those voting on the question for passage.

3. If an increase in the number of members of the city governing body is approved by the electors, the additional members must be elected at the next regular city election or as specified in the resolution or petition pursuant to subsection 1. The additional members shall hold office for terms of four years and until a successor is elected and qualified, unless different terms are specified in the resolution or petition pursuant to subsection 1. The terms of office must be arranged on a staggered basis as otherwise provided by law.

4. If a decrease in the number of members of the city governing body is approved by the electors, the offices identified for abolition shall continue until the time when the terms of those offices expire. A different procedure for abolition of the offices may be specified in the resolution or petition pursuant to subsection 1.

5. All statutory provisions relating specifically to a ten-member council or eleven-member council, whether repealed or amended by this Act, including sections 40-08-03.1, 40-08-03.2, 40-08-04, 40-08-04.1, 40-08-06.1, and 40-12-01, continue to apply to those councils existing on the effective date of this Act until such time as an increase or decrease occurs in the number of members of those councils pursuant to this section.

SECTION 37. AMENDMENT. Section 40-08-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-03. Number of council members ~~determined by population - Census to govern~~. The number of council members is~~:~~

~~1. In cities of two hundred inhabitants or less, four, except that the city council may by resolution duly adopted reduce the number to two.~~

~~2. In cities of more than two hundred but not more than six hundred inhabitants, four.~~

~~3. In cities of more than six hundred but not more than ten thousand inhabitants, four, six, eight, ten, or twelve, as provided by city ordinance.~~

~~4. In cities of more than ten thousand inhabitants, fourteen.~~

~~5. Cities of ten thousand or more inhabitants which have been incorporated and operating under the council form of government may change to a ten council members and mayor organization upon approval by a majority vote at a special election called pursuant to the procedure provided in this chapter.~~

~~Whenever a census of the city shows a population requiring more council members than are in the council at the time of taking the census, the city council is not required to make a change in the number of council members and the corresponding change in the number of wards of the city unless a majority of the qualified electors of the city, to be determined by the number of names on the poll list of the last city election, petition for a change~~ not less than three. The number of council members may be increased or decreased pursuant to section 36 of this Act.

SECTION 38. AMENDMENT. Section 40-08-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-04. Election of council members. In cities containing six hundred inhabitants or less, the council ~~member~~ members must be elected at large. In all other cities operating under the council form of government, ~~except in a city operating with ten council members and mayor,~~ the council members must be elected by wards~~, and two council members must be elected from each ward. In cities operating under ten council members and mayor, one council member must be elected from each of the seven wards and three council members and mayor must be elected at large~~.

SECTION 39. AMENDMENT. Section 40-09-01 of the North Dakota Century Code is amended and reenacted as follows:

40-09-01. Board of city commissioners - ~~Who constitutes~~ Composition. The governing body of a city operating under the commission system of government ~~shall be~~ is the board of city commissioners which ~~shall be~~ is composed of the president of the board of city commissioners and ~~four~~ not less than three city commissioners. The number of city commissioners may be increased or decreased pursuant to section 36 of this Act.

SECTION 40. AMENDMENT. Section 40-09-04 of the North Dakota Century Code is amended and reenacted as follows:

40-09-04. Commissioners - Terms ~~of office - Terms of members of first board~~ - Resignations. Each commissioner and the president of the board of city commissioners shall hold office for four years from and after the date of ~~his~~ election and until ~~his~~ a successor ~~shall have been~~ is duly elected and qualified~~, except that when the first board of city commissioners is elected, the president of the board and the two commissioners receiving the highest number of votes shall hold office until the third Tuesday in April following the second biennial city election thereafter and the others until the third Tuesday in April following the first biennial city election thereafter~~. The commission shall establish by ordinance a procedure whereby one-half of all commissioners, as nearly as practicable, are elected biennially. The president or any other member of the board may resign ~~his~~ from office by filing ~~his~~ a written resignation with the city auditor, who shall ~~lay~~ submit the resignation ~~before~~ to the board of city commissioners at its next regular meeting or at a special meeting called for consideration of ~~such~~ the resignation. The resignation ~~shall become~~ becomes effective upon its acceptance by the board.

SECTION 41. AMENDMENT. Section 8 of chapter 442 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 8. AMENDMENT. Section 40-09-04 of the North Dakota Century Code is amended and reenacted as follows:

40-09-04. Commissioners - Terms ~~of office - Terms of members of first board~~ - Resignations. Each commissioner and the president of the board of city commissioners shall hold office for four years after the date of election and until a successor has been duly elected and qualified~~, except that when the first board of city commissioners is elected, the president of the board and the two commissioners receiving the highest number of votes shall hold office until the fourth Tuesday in June following the second biennial city election thereafter and the others until the fourth Tuesday in June following the first biennial city election thereafter~~. The commission shall establish by ordinance a procedure whereby one-half of all commissioners, as nearly as practicable, are elected biennially. The president or any other member of the board may resign ~~the~~ from office by filing a written resignation with the city auditor, who shall ~~lay~~ submit the resignation ~~before~~ to the board of city commissioners at its next regular meeting or at a special meeting called for consideration of the resignation. The resignation is effective upon its acceptance by the board.

SECTION 42. AMENDMENT. Section 40-10-02 of the North Dakota Century Code is amended and reenacted as follows:

40-10-02. Vote required to adopt plan - ~~When plan effective after adoption~~ Effective date. If ~~four-sevenths~~ a majority of the ~~vote~~ votes cast at the election ~~favor~~ favors the adoption of the city manager plan, the governing body shall declare the plan adopted, and shall fix the date when the ~~same shall go into effect~~ plan becomes effective. ~~Such~~ The date ~~shall~~ must be after the first regular meeting of the governing body in the month of May following the election.

SECTION 43. AMENDMENT. Section 9 of chapter 442 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 9. AMENDMENT. Section 40-10-02 of the North Dakota Century Code is amended and reenacted as follows:

40-10-02. Vote required to adopt plan - ~~When plan effective after adoption~~ Effective date. If ~~four-sevenths~~ a majority of the ~~vote~~ votes cast at the election ~~favor~~ favors the adoption of the city manager plan, the governing body shall declare the plan adopted, and shall fix the date when the plan becomes effective. ~~That~~ The date must be after the first regular meeting of the governing body in the month of July following the election.

SECTION 44. AMENDMENT. Section 40-12-01 of the North Dakota Century Code is amended and reenacted as follows:

40-12-01. Initiative and referendum apply only in commission and modern council cities. The provisions of this chapter relative to the initiating and referring of municipal ordinances shall apply only in cities operating under the commission and modern council system of government ~~except those cities adopting the eleven-member council~~.

SECTION 45. AMENDMENT. Section 40-14-04 of the North Dakota Century Code is amended and reenacted as follows:

40-14-04. Appointive officers in council cities - Appointment of more than one assessor.

1. The mayor, with the approval of the city council, shall appoint the following officers:

~~1.~~ a. A city auditor;

~~2.~~ b. A city assessor;

~~3.~~ c. A city attorney;

~~4.~~ d. A city engineer; and

~~5.~~ e. Such other officers as the city council deems necessary and expedient.

2. The city assessor shall be appointed at the first meeting of the city council in September of each odd-numbered year. If the city council of a city containing five thousand or more inhabitants shall declare, by resolution, that it is necessary to appoint more than one assessor, the mayor, with the approval of the council, may appoint one or two additional city assessors.

3. The city council, including a city council under the modern council form of government, by a majority vote may dispense with any appointive office and provide that the duties of that office be performed by other officers.

SECTION 46. AMENDMENT. Section 40-49-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-49-05. Board of park commissioners in city - Terms.

1. The powers of a park district in a city must be exercised by a board of park commissioners consisting of five or three members, as determined by the governing body of the city in creating the park district or pursuant to section 47 of this Act. Except as provided in subsection 2, each commissioner shall hold office for a term of four years and until a

successor is elected and qualified. The term of office of a commissioner begins two weeks after the regular biennial city election at which the commissioner is elected.

2. Members of a newly created five-member board shall hold office as follows:

   a. Three members until two weeks after the next regular biennial city election.

   b. Two members until two years from the time mentioned in subdivision a.

3. Members of boards of park commissioners which existed before July 1, 1987, shall hold office on the staggered basis in effect on June 30, 1986.

4. Members of a newly created three-member board shall hold office as follows:

   a. Two members until two weeks after the next regular biennial city election.

   b. One member until two years after the next regular biennial city election.

SECTION 47. Two new sections to chapter 40-49 of the North Dakota Century Code are created and enacted as follows:

Change in number of park commissioners - Election.

1. The number of park commissioners may be increased from three to five, or decreased from five to three, pursuant to this section.

2. The process for increasing or decreasing the number of park commissioners may be initiated:

   a. By resolution approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or

   b. By a petition signed by ten percent or more of the total number of qualified electors of the city park district voting for governor at the most recent gubernatorial election and submitted to the governing body of the city.

3. The governing body of the city shall submit the question of increasing or decreasing the number of park commissioners to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 2. The question requires an affirmative vote of a majority of those voting on the question for passage.

4. If an increase in the number of park commissioners is approved by the electors, the two additional park commissioners must be elected at the next regular city election or as specified in the resolution or petition pursuant to subsection 2. One of the additional commissioners shall hold office for a term of four years, and the other commissioner for a term of two years and until a successor is elected and qualified, unless other

terms are specified in the resolution or petition pursuant to subsection 2.

5. If a decrease in the number of park commissioners is approved by the electors, the existing board members shall continue in office until the time when the terms of office of two members of the board expire simultaneously. At that time, those two offices are abolished. A different procedure for abolition of the two offices may be specified in the resolution or petition pursuant to subsection 2.

Dissolution of city park district - Election.

1. A city park district may be dissolved pursuant to a plan adopted pursuant to this section. A proposal for dissolving a city park district may be initiated:

   a. By resolution incorporating a dissolution plan, approved by a majority vote of the board of park commissioners and submitted to the governing body of the city; or

   b. By a petition incorporating a dissolution plan, signed by twenty-five percent or more of the total number of qualified electors of the city park district voting at the last regular city election and submitted to the governing body of the city.

2. The governing body of the city shall submit the question of dissolution to the electors of the park district at any regular city election or primary or general election as specified in the resolution or petition submitted pursuant to subsection 1. The plan incorporated in the resolution or petition is effective and becomes operative according to its terms if a majority of the qualified electors voting approves the plan.

3. A plan for dissolving a city park district may specify:

   a. The disposition and maintenance of land and other property acquired by the board of park commissioners of the dissolved park district;

   b. The manner for payment of any current indebtedness, evidences of indebtedness in anticipation of user fee revenues, bonded indebtedness, and other obligations of the dissolved park district;

   c. The disposition of any outstanding special assessments or other anticipated revenues;

   d. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders and personnel such as delayed effective dates for implementation; and

   e. Other considerations and provisions that are consistent with state law.

4. The governing body of the city shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspaper of the city, not less than two weeks nor more than thirty days, before the date of the election. The governing body may, prior to the election, hold public hearings and community forums and use other suitable

means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan.

SECTION 48. A new chapter to title 40 of the North Dakota Century Code is created and enacted as follows:

Combination of boards of park commissioners - Plan. The membership and functions of a board of city park commissioners may be combined with one or more boards of city park commissioners or with one or more boards of county park commissioners pursuant to a plan adopted pursuant to this chapter. This chapter does not supersede the procedure and requirements of chapter 11-28 with respect to the creation of a joint county park district. A proposal for combining boards of park commissioners may be initiated:

1. By execution of a joint powers agreement between participating city or county boards of park commissioners incorporating a plan for combining boards of park commissioners; or

2. By a petition, signed by ten percent or more of the total number of qualified electors of each affected city park district or county voting for governor at the most recent gubernatorial election and submitted to the city park district or county, incorporating a plan for combining boards of park commissioners.

Election on combination plan. If a plan for combining boards of park commissioners is proposed by agreement or petition, the participating or affected boards shall immediately submit the proposed plan to the governing bodies of the affected cities and, if applicable, to the board of county commissioners of any affected county. Those boards shall jointly submit the question of combination to the qualified electors of the affected cities and counties at a primary or general election as specified in the agreement or petition within two years of the initial submission of the agreement or petition, and shall cause the complete text, or a fair and accurate summary, of the plan to be published in the official newspapers of the affected cities and counties, not less than two weeks nor more than thirty days, before the date of the election. The boards of park commissioners may, prior to the election, hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the purpose and provisions of the plan. The plan incorporated in the agreement or petition is effective and becomes operative according to its terms if a majority of the qualified electors voting in each affected city or county approves the plan.

Contents of plan - Effect of plan - Limitations - Revision or termination.

1. Notwithstanding any other law regarding the structure of a board of park commissioners, a plan for combining a board of city park commissioners with another board of city park commissioners or a board of county park commissioners may specify:

   a. The number, selection, functions, qualifications and training, and terms of the members of the proposed combined board;

   b. The manner of apportionment of the costs of operating the combined board;

c. Procedures for the selection, transfer, reassignment, or termination of personnel associated with the combined board and previous boards;

d. Procedures for the transfer of powers, records, documents, and property, for the equalization of the property, funds on hand, and debts, and for the adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

e. The transition in implementing the plan, including elements that consider the reasonable expectations of current officeholders or personnel such as delayed effective dates for implementation;

f. A limited application or temporary implementation of the plan, including provisions that permit implementation on a trial or experimental basis such as the expiration of the plan on a date certain in the future, required reapproval of the plan by the electors at a future date, or a phased-in implementation of various components of the plan; and

g. Other provisions which are consistent with the powers and functions of a board of park commissioners and with state law.

2. As a political subdivision of the state, the combined board of park commissioners has the status of a board of city park commissioners, or the status of both a board of city park commissioners and a board of county park commissioners if both are combined. If applicable, all laws relating to the functions and powers of a board of city park commissioners and, if city and county boards are combined, laws relating to the functions and powers of a board of county park commissioners apply to a combined board of park commissioners.

3. A plan for combining boards of park commissioners may not repeal or diminish any general law of the state directing or requiring a board of park commissioners to carry out any function or provide any service. A combined board of park commissioners, resulting from a combination of boards of city and county park commissioners, may not levy any tax or exercise any power that was not otherwise conferred within the territorial jurisdiction of the county upon the previous board of county park commissioners, and taxes that may be authorized by law for a city park district may be levied only in areas within the jurisdiction of the combined board which are designated as cities.

4. A plan adopted pursuant to this chapter may be revised or terminated through the procedures set forth in this chapter for adopting a plan.

SECTION 49. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Joint powers agreements - General authority.

1. Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of

any power or function that is authorized by law or assigned to one or more of them. Any political subdivision of this state may enter into a joint powers agreement with a political subdivision of another state or political subdivision of a Canadian province if the power or function to be jointly administered is a power or function authorized by the laws of this state for a political subdivision of this state and is authorized by the laws of the other state or province. A joint powers agreement may provide for:

a. The purpose of the agreement or the power or function to be exercised or carried out.

b. The duration of the agreement and the permissible method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of any property upon the partial or complete termination.

c. The precise organization, composition, and nature of any separate administrative or legal entity, including an administrator or a joint board, committee, or joint service council or network, responsible for administering the cooperative or joint undertaking. Two or more political subdivisions which enter into a number of joint powers agreements may provide a master administrative structure for the joint administration of any number of those agreements, rather than creating separate administrative structures for each agreement. However, no essential legislative powers, taxing authority, or eminent domain power may be delegated by an agreement to a separate administrative or legal entity.

d. The manner in which the parties to the agreement will finance the cooperative or joint undertaking and establish and maintain a budget for that undertaking. The parties to the agreement may expend funds pursuant to the agreement, use unexpended balances of their respective current funds, enter into a lease-option to buy and contract for deed agreements between themselves and with private parties, accumulate funds from year to year for the provision of services and facilities, and otherwise share or contribute property in accordance with the agreement in cooperatively or jointly exercising or carrying out the power or function. The agreement may include the provision of personnel, equipment, or property of one or more of the parties to the agreement that may be used instead of other financial support.

e. The manner of acquiring, holding, or disposing of real and personal property used in the cooperative or joint undertaking.

f. The acceptance of gifts, grants, or other assistance and the manner in which those gifts, grants, or assistance may be used for the purposes set forth in the agreement.

g. The process to apply for federal or state aid, or funds from other public and private sources, to the parties for furthering the purposes of the agreement.

h. The manner of responding for any liability that might be incurred through performance of the agreement and insuring against that liability.

i. Any other necessary and proper matters agreed upon by the parties to the agreement.

2. Any county, city, township, city park district, school district, or other political subdivision of this state may enter into an agreement in the manner provided in subsection 1 with any agency, board, or institution of the state for the undertaking of any power or function which any of the parties is permitted by law to undertake. Before an agreement entered into pursuant to this subsection is effective, the respective governing body or officer of the state agency, board, or institution must approve the agreement and the attorney general must determine that the agreement is legally sufficient.

3. An agreement made pursuant to this chapter does not relieve any political subdivision or the state of any obligation or responsibility imposed by law except to the extent of actual and timely performance by a separate administrative or legal entity created by the agreement. This actual and timely performance satisfies the obligation or responsibility of the political subdivision.

Clarification of constitutional authority and effect of other statutes - Construction.

1. The specificity of this chapter, chapter 54-40, or any other law may not be construed to limit the general authority of a political subdivision to enter into agreements pursuant to section 10 of article VII of the Constitution of North Dakota, except for specific limitations on that authority, and subject to specific procedural requirements, imposed by this chapter, any other law, or a home rule charter.

2. This chapter does not dispense with the procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

Political subdivisions encouraged to file agreements with advisory commission on intergovernmental relations. A political subdivision entering into a joint powers agreement pursuant to this chapter or any other law is encouraged to file one copy of the agreement and explanatory material with the advisory commission on intergovernmental relations, to assist the commission in providing information for other political subdivisions exploring cooperative arrangements.

SECTION 50. AMENDMENT. Section 54-40-08 of the North Dakota Century Code is amended and reenacted as follows:

54-40-08. ~~**Joint functions - Who may participate**~~ Agreements for the use by political subdivisions of buildings and facilities of the state.

1. ~~Any municipality, county, park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into agreements with one another for joint or cooperative action, on a cost-sharing basis, or otherwise, to carry out~~

~~any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds of such municipality, county, park district, school district, or other political subdivision pursuant to such agreement, to use unexpended balances of their respective current funds, to enter into lease-option to buy and contract for deed agreements between themselves and with private parties, and to accumulate funds from year to year for the provision of services and facilities, and to otherwise share or contribute property in accordance with such agreement in jointly and cooperatively carrying out such function or duty.~~

~~2.~~ Any ~~municipality,~~ county, city, township, city park district, school district, or other political subdivision of this state may enter into ~~agreements in the manner provided in subsection 1~~ an agreement with any agency, board, or institution of the state for the use of buildings and facilities under the control of ~~such~~ that state agency, board, or institution for ~~such periods~~ a period of time as the parties may determine to be necessary. ~~No such agreement may be entered into by any state agency, board, or institution unless~~ Before an agreement pursuant to this section is effective, the respective governing body or officer of ~~such~~ the state agency, board, or institution ~~has approved~~ must approve the agreement and the attorney general ~~has determined~~ must determine that the agreement is legally sufficient.

2. The ~~municipality, county, park district, school district, or other~~ political subdivision ~~of this state~~, pursuant to an agreement for the use of buildings and facilities, may make improvements to ~~such~~ the buildings or facilities ~~in lieu~~ instead of any rental or other payments, but all ~~such~~ improvements must first be approved by the governing body or officer of ~~such~~ the state agency, board, or ~~department~~ institution. ~~Such~~ The buildings and facilities may be moved or replaced at any time during the term of an agreement, and the ~~municipality, county, park district, school district, or other~~ political subdivision ~~is entitled to~~ may use ~~such~~ the buildings and facilities constructed in place ~~thereof~~ of the original buildings and facilities for the remainder of the term of the agreement.

SECTION 51. A new chapter to title 54 is created and enacted as follows:

County-city home rule - City participation. One or more counties and one or more cities within each county may frame and adopt a home rule charter to form a single unit of local government pursuant to this chapter. A county-city home rule charter may include a city that participates in proposing the charter if a majority of the electors of the city voting approve the proposed charter.

Method of proposing home rule charter. The process for drafting and submitting a county-city home rule charter may be initiated by:

1. Separate motions by one or more boards of county commissioners and one or more city governing bodies within each of those counties;

2. The execution of a joint powers agreement; or

3. A petition filed with the governing body of each county and city and signed by ten percent or more of the total number of qualified electors of each county and city voting for governor at the most recent gubernatorial election. The petition must be signed by at least ten percent of the

electors residing within each participating city and ten percent of the electors residing in the remainder of the county.

Charter commission alternatives - Powers and limitations - Charter contents.

1. Within sixty days after proceedings are initiated for a county-city home rule charter, the governing bodies of the affected counties and cities shall enter into a joint powers agreement specifying the procedure for framing the charter, which may include the establishment of a single, cooperative charter commission with membership representing each county and city. As an alternative, the governing body of each county and city may establish a charter commission to frame the charter in cooperative study with the charter commissions of the other counties or cities. The governing bodies shall designate one of the members as chair of the charter commission.

2. Each governing body may, whether separate charter commissions are established or another procedural arrangement is established through execution of a joint powers agreement, set the compensation and expenses of charter commission members and, from its general funds, furnish the charter commission with office space, supplies, and legal, clerical, and other assistance.

3. A charter commission, during its deliberation, may hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion on the subject of the proposed county-city home rule charter, and may report periodically to the affected governing bodies on its progress. In preparing the charter, the charter commission may:

   a. Include all, or any part, of the available powers enumerated by sections 11-09.1-05 and 40-05.1-06 for county and city home rule in the county-city charter, subject to the limitations of those provisions. A unified county-city government may not levy any tax that would not otherwise be authorized within the jurisdiction of a city or county pursuant to section 11-09.1-05 or 40-05.1-06, and city taxes may be levied only within areas of the unified government which are designated as participating cities;

   b. Provide for adjustment of existing bonded indebtedness and other obligations in a manner that will provide for a fair and equitable burden of taxation for debt service;

   c. Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments unified under the charter;

   d. Provide for the reorganization, abolition, or adjustment of boundaries of any existing boards, commissions, agencies, and special districts of the unified governments;

   e. Include provisions for transition in implementing the charter, including elements that consider the reasonable expectations of current officeholders such as delayed effective dates for

implementation at the end of a current term or a future term, upon the occurrence of a vacancy, or on a date certain;

f. Include provision for the limited application or temporary implementation of the charter, including provisions that permit implementation on a trial or experimental basis such as the expiration of the charter on a date certain in the future, required reapproval of the charter by the electors at a future date, or a phased-in implementation of various aspects of the charter; and

g. Include other provisions that the charter commission decides to include and which are consistent with state law.

4. A county-city home rule charter may not diminish the term of office for which a current county officer was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term.

5. A county-city home rule charter may not diminish the future term of office, or redesignate an elected office as appointed, with respect to any person who, on the effective date of this Act, holds an elected county office and continues tc hold that specific office for future terms on an uninterrupted basis. This subsection does not apply after January 1, 2002, or if the person holding the affected office consents in writing to the proposed charter and submits that written document prior to the scheduled implementation of the charter to a district judge serving the judicial district in which the county is located.

6. The charter commission shall submit a single, joint report and proposed charter within one year after appointment, unless a later submission date is agreed to by the affected governing bodies. The proposed charter or accurate summary of the charter must be published in the official newspaper of each affected county and city, at the expense of each county and city, at least once during two different weeks within the thirty-day period immediately preceding the date of election. However, a city with a population of one thousand or less may, instead of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city.

Submission of charter to electors. At least sixty days, but not more than two years, after submission of the proposed charter to the affected governing bodies, the proposed charter must be submitted to a vote of the qualified electors of each affected county and city at a primary or general election held concurrently. The question on the ballot at the election must be framed in a manner that fairly and accurately describes the substance of the proposed charter. If the proposed charter has been submitted to a vote of the qualified electors of a county or city, the governing body may call a special election to resubmit the proposed charter to a vote of the qualifed electors, and the special election must take place at least sixty days after the call for the special election.

Ratification by majority vote - Effect of unification - Former powers preserved - Supersession of existing charters and conflicting state laws - Filing of copies of new charter.

1. If a majority of the qualified electors of the county and a majority of the qualified electors of at least one city in the county voting approves the charter, it is ratified and becomes the organic law of the area on the first day of January or July next following the election. However, the proposed charter may condition the approval of the charter on separate approval by any number of specified counties or cities participating in the charter process.

2. On the effective date, the separate corporate existence of the county and of each participating city are unified into one unit of local government. The unified government shall succeed to, possess, and own all of the assets and, except as otherwise provided in the charter, becomes responsible for all the obligations and liabilities of each affected county and city. Any provision of law authorizing contributions or aid of any kind from the state or federal government to an affected county and city remains in full force and effect with respect to the unified county-city government. All powers granted any county or city by general law are granted to a home rule county-city.

3. The county-city home rule charter and the ordinances made pursuant to the charter must be liberally construed to supersede, within the territorial limits and jurisdiction of the affected area, any conflicting state law. The charter may not authorize the enactment of ordinances to diminish the authority of boards of supervisors of a township or to change the structure of township government in any organized civil township, without the consent of the board of supervisors of the township. Any ordinance of a unified county-city government does not supersede any specific statutory limitation imposed on a home rule county or city.

4. One copy of the charter as ratified must be filed with the secretary of state, one with the clerk of district court for any affected county or city, and one with the officer of unified county-city government responsible for maintaining permanent records. Courts shall take judicial notice of the charter.

Amendment or repeal - Discontinuance of participation.

1. A county-city home rule charter may be amended or repealed by a proposal submitted by the governing body of the unified county-city government or by a petition filed with the governing body signed by ten percent or more of the total number of qualified electors within the jurisdiction of the county-city government who voted in the last preceding general election. The governing body may appoint a charter commission to draft amendments to the charter. The proposals must be submitted to a vote of the qualified electors of the unified county-city government at the next primary or general election. The voters may accept or reject any amendment or a repeal by a majority vote of the electors of the unified government voting at the election.

2. A participating county or city may discontinue its participation in the unified county-city government by filing with the governing body a petition proposing the action that is signed by ten percent or more of the total number of qualified electors within the county or city. The proposal must be submitted to a vote of the qualified electors at the next

primary or general election. The voters may accept or reject the proposal by a majority vote of the electors of the county or city voting at the election.

Manner of calling and holding elections. The elections provided for in this chapter are subject to the laws applicable to other elections. All qualified electors of any affected county and city are eligible to vote at the election. The charter commission, for proposals to adopt a home rule charter, or the governing body, for proposals to amend or repeal a home rule charter, shall prescribe the form of ballot so that the voter may signify whether the voter is for or against the proposed home rule charter or the amendment or repeal.

Vested property - Rights of action - Actions saved. The adoption of any charter or amendment does not destroy any property, action, right of action, claim, or demand of any nature vested in the county-city. All rights of action, claims, or demands are preserved to the county-city, and to any persons asserting any claims against the county-city as though the charter or amendment had not been adopted. The adoption of any charter or amendment affects neither the right of the county-city to collect special assessments previously levied under any law or charter for the purpose of public improvements, nor impairs the obligation of any existing contract to which the county-city is a party.

Effect of amendment or repeal on salary or term of office. On the first day of January following repeal of a county-city home rule charter any affected county and city reverts to the form of government in place immediately preceding adoption of the home rule charter. If positions to which officials were elected under the home rule charter are substantially the same as positions under the form of government to which the county and city revert upon repeal, the elected officials shall continue to exercise the authority of their positions for the salary prescribed by the home rule charter until expiration of their terms of office as prescribed by the home rule charter. An amendment of a home rule charter may not diminish the term for which any official was elected, redesignate that elected office during that term as appointed, or reduce the salary of the office for that term.

SECTION 52. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Purpose. The purpose of this chapter is to provide procedures for political subdivisions by mutual agreement to transfer the administrative, legal, and financial responsibility for any powers or functions to the county, as authorized by section 10 of article VII of the Constitution of North Dakota. Nothing in this chapter may be construed to affect the authority of political subdivisions to enter into joint powers agreements for the cooperative or joint administration of powers or functions or other contracts as permitted by law.

Definitions. As used in this chapter:

1. "County" means the county in which a political subdivision is located.
2. "Political subdivision" means a city, township, city park district, school district, or other unit of local government or special district or authority in this state.

Transfer of powers or functions to the county. A political subdivision may enter into an agreement for the transfer of the legal, administrative, and financial responsibilities for carrying out a power or function of the political division as required or permitted by law or home rule charter. The agreement must include:

1. The nature of the power or function to be transferred;
2. The effective date of the proposed transfer;
3. The responsibility for administration of the power or function to be transferred;
4. The manner in which affected employees currently engaged in the performance of the power or function will be transferred, reassigned, or otherwise treated;
5. The manner in which real property, facilities, equipment, or other personal property required in the exercise of the power or function are to be transferred, sold, or otherwise disposed of;
6. The method of financing, establishing, and maintaining a budget for the power or function; and
7. Other legal, financial, and administrative arrangements necessary to affect the transfer in an orderly and equitable manner.

Revocation of transfer. An agreement may be amended by further agreement of the parties in the same manner as the original agreement was made. An agreement may be terminated as provided in the agreement or, if no provision is made for the termination, by joint action of all parties, or by an individual party not less than one year after its notice in writing to all other parties. If a political subdivision that is a party to the agreement is dissolved, the agreement may be terminated as provided in this section by the governing body of the political subdivision upon its reincorporation or reestablishment, by a petition submitted to the county and signed by a majority of the electors residing within the previous territorial jurisdiction of the dissolved political subdivision, or in some other manner specified in the agreement.

SECTION 53. REPEAL. Sections 11-05-01, 11-05-03, 11-05-08, 11-05-10, 11-05-11, 11-05-11.1, 11-05-12, 11-05-13, 11-05-14, 11-05-16, 11-05-17, 11-05-18, 11-05-19, 11-05-20, 11-05-21, 11-05-22, 11-05-23, 11-05-24, 11-05-27, 11-06-02, 11-06-05, 11-08-02, 11-09.1-08, and 40-05.1-09 of the North Dakota Century Code; sections 11-09-02, 40-08-03.1, 40-08-03.2, 40-08-04.1, 40-08-06.1, and 54-40-07 of the 1991 Supplement to the North Dakota Century Code; and section 5 of chapter 326 and section 6 of chapter 442 of the 1991 Session Laws of North Dakota are repealed.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 402

HOUSE BILL NO. 1080
(Political Subdivisions Committee)
(At the request of the State Historical Society)

CITY PARTICIPATION IN HISTORIC PRESERVATION

AN ACT to create and enact a new subsection to section 40-05-01 of the North Dakota Century Code, relating to powers of cities to participate in the national historic preservation program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 40-05-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To participate and enact or adopt ordinances necessary for participation in the nation's historic preservation program as a certified local government, as provided for under 36 CFR 61.5.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 403

SENATE BILL NO. 2276
(Senator Lips)

BIDDER'S OR CONTRACTOR'S BONDS

AN ACT to amend and reenact sections 40-22-22 and 40-22-30 of the North Dakota Century Code, relating to sureties of bidder's and contractor's bonds for improvements by special assessment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-22-22 of the North Dakota Century Code is amended and reenacted as follows:

40-22-22. Execution of bidder's bond ~~- Affidavit required~~. The bidder's bond ~~shall~~ must be executed by the bidder as principal and may be provided by a surety company authorized to do business in this state~~, or by two or more freeholders resident of this state,~~ as ~~sureties~~ surety, or by a bank letter of credit, a cash bond, or a certified check. ~~If the bidder's bond is executed by individuals as sureties, such sureties must attach to the bond an affidavit of justification showing that they are worth in the aggregate in property within this state a sum equal to twice the penalty of the bond over and above their exemptions.~~

SECTION 2. AMENDMENT. Section 40-22-30 of the North Dakota Century Code is amended and reenacted as follows:

40-22-30. Contractor's bond - Execution ~~- Affidavit required~~. Within the time fixed by the governing body for executing the contract, the successful bidder shall file with the city auditor a contract bond in a sum equal to the full amount of the contract. ~~Such~~ The bond ~~shall~~ must be executed by the bidder or contractor as principal and by a surety company authorized to do business in this state~~, or by two or more freeholders who are residents of this state,~~ as ~~sureties~~ surety. ~~If the contract bond is executed by individuals as sureties, such sureties must attach to the bond an affidavit of justification showing that they are worth in the aggregate in property within this state a sum equal to twice the penalty of the bond over and above their exemptions.~~

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 404

SENATE BILL NO. 2338
(Senators Graba, B. Stenehjem)
(Representative Glassheim)

ANNEXED PROPERTY SPECIAL ASSESSMENTS

AN ACT to amend and reenact sections 40-23-17, 40-23-18, and 40-23-19 of the North Dakota Century Code, relating to levy of special assessments against property benefited by improvements before the property was annexed to the city.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-23-17 of the North Dakota Century Code is amended and reenacted as follows:

40-23-17. Authority to levy ~~water and sewer~~ assessments on property not originally assessed. Any municipality ~~which has heretofore paid or provided or may hereafter pay or provide~~ that pays or provides for the payment of part or all of the cost of an improvement ~~to its water or sewer system, from sources other than special assessments upon benefited property,~~ may subsequently levy special assessments ~~therefor~~ for the cost of the improvement upon properties benefited ~~thereby~~ by the improvement in the cases and in accordance with the procedure and subject to the conditions set forth in sections 40-23-17 through 40-23-21.

SECTION 2. AMENDMENT. Section 40-23-18 of the North Dakota Century Code is amended and reenacted as follows:

40-23-18. Assessments on property within the corporate limits. ~~No~~ A subsequent assessment ~~shall~~ may not be levied for any improvement on any property ~~which~~ that was within the corporate limits of the municipality on the date of the execution of the first contract for any part of ~~such~~ the improvement, unless a special improvement district was originally created for ~~such~~ the improvement, and the property on which the subsequent assessment is to be levied was not originally assessed ~~therefor~~ for the improvement but is subsequently included within another improvement district created to finance ~~a water or sewer main which~~ an improvement that will be connected directly or indirectly with the original improvement. ~~In such event, said assessments~~ Assessments under this section may be included in a separate column in the special assessment list prepared for ~~such water or sewer main~~ the improvement district, and levied upon the properties included ~~therein~~ in the district at the same time and upon the same notices and hearings as provided by law for the ~~water or sewer main~~ other assessments~~; provided, that a.~~ A resolution determining the necessity of the ~~water or sewer main shall~~ improvement must have been adopted in the manner prescribed by law, referring to the designation of the district created for the original improvement and stating that a portion of the cost ~~thereof~~ of the improvement is proposed to be assessed upon property within the ~~water or sewer~~ improvement district.

SECTION 3. AMENDMENT. Section 40-23-19 of the North Dakota Century Code is amended and reenacted as follows:

40-23-19. Assessments on annexed property for previous benefits. Any property ~~which~~ that was outside the corporate limits of the municipality at the time of contracting for ~~a water or sewer~~ an improvement, which is benefited by ~~such~~ the improvement and is subsequently annexed to the municipality, may ~~thereafter~~ be assessed ~~therefor~~ for the improvement subject to the same conditions and by the same procedure as provided in section 40-23-18. ~~Any such~~ The property ~~which~~ that is benefited may also be assessed for ~~a water or sewer main which, at the time of contracting therefor, was outside the corporate limits, or for~~ any ~~water or sewer~~ improvement, within or outside the corporate limits, which is determined by the governing body and the special assessment commission to benefit ~~only~~ property ~~which~~ that was outside the corporate limits at the time of contracting ~~therefor~~ for the improvement, whether or not an improvement district was previously created ~~therefor, and whether or not the property assessed abuts on such main or other improvement or on a main to be connected thereto~~ for the improvement. For this purpose the governing body may create one or more improvement districts comprising ~~such~~ all or part of the annexed territory ~~or any part thereof, and~~. The governing body may ~~thereafter~~ provide for the levy of special assessments upon such property in the manner provided in this title, but may dispense with the requirements of this title as to the adoption of a resolution of necessity and the advertisement and award of a contract for the improvement~~, and the assessment~~. Assessment proceedings ~~shall be~~ under this section are valid notwithstanding any failure of the previous proceedings to comply with the provisions of law regarding improvements to be financed by special assessments. The cost of any street improvement project that is subsequently special assessed may be the sinking fund depreciated cost based on the applicable life cycle for the type of street improvement as determined by the city engineer.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 405

SENATE BILL NO. 2472
(Senators Graba, B. Stenehjem)

CITY YEAR-END CASH BALANCES

AN ACT to amend and reenact section 40-40-21 of the North Dakota Century Code, relating to unencumbered cash balances in city funds at the end of a fiscal year.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-40-21 of the North Dakota Century Code is amended and reenacted as follows:

40-40-21. Balance at end of fiscal year to become part of unappropriated balance - When special appropriation to lapse. At the end of the fiscal year, the balance to the credit of each annual appropriation shall become a part of the general unappropriated balance in the municipal treasury, except that the unused balance to the credit of the equipment replacement fund provided for in section 40-40-05 shall not become a part of the general unappropriated balance in the municipal treasury, but no special appropriation shall lapse until the work for which it was made has been completed, the bills paid, and the accounts closed. The governing body of a city may elect, at the end of the fiscal year, to carry over the unencumbered cash balance in the general fund or other budgeted funds and designate the balances for subsequent years.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 406

HOUSE BILL NO. 1376
(Representatives Drovdal, Kempenich, Sitz, Sveen)
(Senators Dotzenrod, Andrist)

UNORGANIZED TOWNSHIP RECREATION SYSTEM

AN ACT to amend and reenact section 40-55-01 of the North Dakota Century Code, relating to the power of a county commission to act on behalf of an unorganized township for a public recreation system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-55-01 of the North Dakota Century Code is amended and reenacted as follows:

40-55-01. Definitions.

1. "Governing body" as ~~herein~~ used in this chapter means city council, board of trustees or commissioners of any city or township, the board of county commissioners on behalf of any unorganized township, the trustees of any school district, and the commissioners of any park district in North Dakota.

2. "Municipality" as used in this chapter refers to and means any city or organized or unorganized township in North Dakota.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 407

HOUSE BILL NO. 1510
(Representative Freier)
(Approved by the Delayed Bills Committee)

NEW INDUSTRY TAX EXEMPTION ELIGIBILITY

AN ACT to create and enact a new section to chapter 40-57.1 of the North Dakota Century Code, relating to the tax commissioner providing a tax lien of record clearance before the state board of equalization grants a state income tax exemption for a new or expanding business; and to amend and reenact subsection 4 of section 40-57.1-02 of the North Dakota Century Code, relating to the definition of a project qualifying for an income tax exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 4 of section 40-57.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises. For the purpose of the income tax exemption, "project" means both "primary sector business" and "tourism" as defined by this section and includes the establishment of a new qualifying business or the expansion of a qualifying existing business.

SECTION 2. A new section to chapter 40-57.1 of the North Dakota Century Code is created and enacted as follows:

Tax lien of record clearance.

1. A project operator is not eligible for the income tax exemption under section 40-57.1-04 until a showing is made that the project operator has satisfied all state and local tax liens of record for delinquent property, income, sales, or use taxes owed to the state or a political subdivision.

2. A certificate from the tax commissioner to the state board of equalization satisfies the requirement of subsection 1.

3. If the project operator is a corporation, any of its officers charged with the responsibility for making either property, income, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax liens of record for property, income, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or

[1] NOTE: Section 40-57.1-02 was also amended by section 9 of Senate Bill No. 2222, chapter 92.

local tax liens of record for property, income, sales, or use taxes for which the individual is personally liable.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 408

SENATE BILL NO. 2191
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

PROPERTY TAX REVISIONS

AN ACT to amend and reenact section 40-57.1-04.3, subsections 20 and 26 of section 57-02-08, sections 57-09-05, 57-23-07, 57-28-09, 57-28-10, and 61-24-10 of the North Dakota Century Code, relating to the property tax exemption on speculative industrial buildings and properties owned by a local development corporation, the property tax exemptions for a disabled person, the membership of a township board of equalization, the compromise of property tax, the issuance of a tax deed, the appraisal of property acquired by a county by tax deed, and the certified copies of the budget and tax levy of the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.1-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **40-57.1-04.3. Property tax exemption on speculative industrial buildings and properties owned by a local development corporation.** A municipality may, in its discretion, grant partial or complete exemption from ad valorem taxation on buildings, structures, and improvements constructed and owned by a local development corporation for the express purpose of attracting new industry to this state. This exemption from ad valorem taxation is only available on new buildings, structures, and improvements while they remain unoccupied. Once the building, structure, or improvement is occupied, the exemption continues until the next annual assessment date following the first occupancy. This section does not affect the eligibility for property tax exemption of a business available under other provisions of this chapter, provided application for the tax exemption is ~~made~~ granted prior to occupancy. A written request for the exemption is to be filed by the local development corporation with the municipality. The request will be reviewed at an official meeting of the governing body and will be placed on the agenda for final action at the next official meeting. The governing body of the municipality shall notify the county director of tax equalization with respect to any exemption granted under this section.

SECTION 2. AMENDMENT. Subsections 20 and 26 of section 57-02-08 of the 1992 Special Supplement to the North Dakota Century Code are amended and reenacted as follows:

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[1] NOTE: Section 40-57.1-04.3 was also amended by section 10 of Senate Bill No. 2222, chapter 92.

20. Fixtures, buildings, and improvements up to the amount of valuation specified, when owned and occupied as a homestead, as hereinafter defined, by any of the following persons:

    a. A paraplegic disabled veteran of the United States armed forces or any veteran who has been awarded specially adapted housing by the veterans' administration, or the unremarried surviving spouse if such veteran is deceased~~; provided, that this exemption shall not exceed ten thousand dollars of taxable valuation~~.

    b. A disabled veteran of the United States armed forces who was discharged under honorable conditions or who has been retired from the armed forces of the United States with an armed forces service-connected disability of fifty percent or greater, or the unremarried surviving spouse if ~~such~~ the veteran is deceased, if the income of ~~such~~ the veteran and the spouse, or if ~~such~~ the veteran is deceased the income of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section exclusive of any compensation or pension for service-connected disability from the United States government~~; provided, that this exemption shall not exceed five thousand dollars of taxable valuation~~.

    c. Any permanently and totally disabled person who is permanently confined to use of a wheelchair, or, if deceased, the unremarried surviving spouse of ~~such~~ a permanently and totally disabled person~~, shall be entitled to a reduction of five thousand dollars of taxable valuation~~. If the spouse of ~~such~~ a permanently and totally disabled person owns the homestead or if it is jointly owned by them, the same reduction in assessed valuation shall apply as long as both reside thereon. The provisions of this subdivision shall not reduce the liability for special assessments levied upon the homestead. The phrase "permanently confined to use of a wheelchair" means that the person cannot walk with the assistance of crutches or any other device and will never be able to do so and that a physician selected by the local governing board has so certified.

Any person claiming an exemption under this subsection for the first time shall file with the county auditor an affidavit showing the facts herein required and a description of the property and, in addition, a disabled veteran claiming exemption under subdivision b shall also file with the affidavit a certificate from the United States veterans' administration, or its successors, certifying to the amount of the disability; ~~such~~ the affidavit and certificate shall be open for public inspection. Any ~~such~~ person shall thereafter furnish to the assessor or other assessment officials when requested to do so any information which is believed will support the claim for exemption for any subsequent year.

For purposes of this subsection, "homestead" shall have the meaning provided in section 47-18-01 except that it shall also apply to any person who otherwise qualifies under the provisions of this subsection whether or not ~~such~~ the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year

in which ~~such~~ the veteran shall have held title to ~~such~~ the exempt property.

26. Fixtures, buildings, and improvements ~~up to a taxable valuation of ten thousand dollars~~ when owned and occupied as a homestead, as hereinafter defined, by a paraplegic disabled person, or if ~~such~~ the person is deceased the unremarried spouse, if the income from all sources of ~~such~~ the person and spouse, or if ~~such~~ the person is deceased the income from all sources of the unremarried surviving spouse, in the calendar year prior to the year for which the exemption is claimed did not exceed the maximum amount of income provided in section 57-02-08.1 for receiving a homestead credit under that section. To obtain ~~such~~ the exemption for the first time, a certificate from a medical doctor who is approved by the board of county commissioners, accompanied by an affidavit, showing the facts herein required and a description of the property, shall be filed with the county auditor. ~~Such~~ The affidavit and accompanying certificate shall be opened to public inspection. Any person claiming the exemption for any year after the first year shall furnish to the assessor or other assessment officials when requested to do so any information which ~~he~~ the person believes will support ~~his~~ the claim for the exemption for any subsequent year. For purposes of this subsection, "homestead" shall have the meaning provided in section 47-18-01 except that it shall also apply to any person who otherwise qualifies under the provisions of this subsection whether or not ~~such~~ the person is the head of a family. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which ~~such~~ the person shall have held title to ~~such~~ the exempt property.

SECTION 3. AMENDMENT. Section 57-09-05 of the North Dakota Century Code is amended and reenacted as follows:

57-09-05. Quorum - Time for completing equalization. Any two members of ~~the~~ a three-member board of equalization and any three members of a five-member board of equalization are authorized to act at the meeting of the board and they may adjourn from day to day, but the equalization must be completed within ten days.

SECTION 4. AMENDMENT. Section 57-23-07 of the North Dakota Century Code is amended and reenacted as follows:

57-23-07. County commissioners may compromise tax. Whenever taxes on any real estate remain unpaid and ~~such~~ the property has not been sold to any purchaser other than the county, the board of county commissioners, subject to the approval of the state tax commissioner, by reason of depreciation in the value of ~~such~~ the property or for other valid cause, may compromise with the owner of ~~such~~ the property by abating a portion of ~~such~~ the delinquent taxes, together with any penalty and interest on ~~such~~ that portion, on payment of the remainder. The county commissioners may not compromise the tax after the county auditor has issued a tax deed to the county.

SECTION 5. AMENDMENT. Section 57-28-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the expiration of the period of redemption for property that was sold to the county for taxes, and which has not

been assigned or redeemed, the county auditor shall issue a tax deed to the county. The tax deed passes the property in fee to the county, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of expiration of the period of redemption and except for a homestead credit for special assessments lien provided for in section 57-02-08.3. While the county holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

SECTION 6. AMENDMENT. Section 57-28-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-10. Appraisal for annual sale - Minimum sale price. All property acquired by the county by tax deed must be appraised by the board of county commissioners at least thirty days before the annual sale under this chapter. The appraised price must be sufficient to cover all taxes, special assessments, homestead credit for special assessments, penalties, interest, and costs which were due against the property at the time of the service of the notice of expiration of the period of redemption, plus an amount equal to the estimated taxes and special assessments for the current assessment year. If the fair market value of the property is more than the total amount due against the property, the minimum sale price of the property must be at least equal to the total amount due against the property. If the fair market value of the property is less than the total amount due against the property, the board shall fix a fair minimum sale price for the property.

SECTION 7. AMENDMENT. Section 61-24-10 of the North Dakota Century Code is amended and reenacted as follows:

61-24-10. Certified copies of levy and budget sent to county auditors. Immediately after completion of the budget and the adoption of the annual tax levy by the board of directors of the district, but not later than October first, the secretary of the district shall send one certified copy of the levy as adopted and one certified copy of the budget to the county auditor of each county in the district, and one certified copy of ~~such~~ the levy and one certified copy of ~~such~~ the budget to the state ~~tax commissioner~~ auditor.

Approved March 10, 1993
Filed March 11, 1993

UNIFORM COMMERCIAL CODE

CHAPTER 409

HOUSE BILL NO. 1042
(Legislative Council)
(Interim Judiciary Committee)

LOST, STOLEN, OR DESTROYED CHECKS

AN ACT to create and enact a new section to chapter 41-03 of the North Dakota Century Code as created by chapter 448 of the 1991 Session Laws of North Dakota, relating to cashier's checks, teller's checks, and certified checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 41-03 of the North Dakota Century Code as created by chapter 448 of the 1991 Session Laws of North Dakota is created and enacted as follows:

(3-312) Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

1. In this section:

   a. "Check" means a cashier's check, teller's check, or certified check.

   b. "Claimant" means a person who claims the right to receive the amount of a check that was lost, destroyed, or stolen.

   c. "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that:

      (1) The declarer lost possession of a check;

      (2) The declarer is the drawer or payee of the check in the case of a certified check, or the remitter or payee of the check in the case of a cashier's check or teller's check;

      (3) The loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

      (4) The declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

   d. "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

2. A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if the claimant is the drawer or payee of a certified check or the remitter or payee of a

cashier's check or teller's check, the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

a. The claim becomes enforceable at the later of the time the claim is asserted, the ninetieth day following the date of the check in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance in the case of a certified check.

b. Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

c. If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

d. When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to subdivision a of subsection 1 of section 41-04-30, payment to the claimant discharges all liability of the obligated bank with respect to the check.

3. If the obligated bank pays the amount of a check to a claimant under subdivision d of subsection 2 and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to refund the payment to the obligated bank if the check is paid, or to pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

4. If a claimant has the right to assert a claim under subsection 2 and is also a person entitled to enforce a check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 41-03-35.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 410

HOUSE BILL NO. 1041
(Legislative Council)
(Interim Judiciary Committee)

BULK TRANSFER LAW REPEAL

AN ACT to repeal chapter 41-06 of the North Dakota Century Code, relating to the Uniform Commercial Code - Bulk Transfers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 41-06 of the North Dakota Century Code is repealed.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 411

HOUSE BILL NO. 1212
(Finance and Taxation Committee)
(At the request of the Office of Management and Budget)

CENTRAL FILING SYSTEM FEES

AN ACT to create and enact a new section to chapter 41-09 of the North Dakota Century Code, relating to fees for filing documents in the Uniform Commercial Code central filing system; to amend and reenact subsections 5, 9, and 10 of section 41-09-42 of the North Dakota Century Code, relating to fees for obtaining information from the Uniform Commercial Code central filing system; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

Surcharge on filing fees. In addition to the fees provided elsewhere for filing documents in the central filing data base system, each register of deeds and the secretary of state shall charge an additional two dollar and fifty cent fee for each original filing, amendment, continuation, assignment, release, or partial release filed. All the fees collected under this section must be deposited into the general fund.

[1] **SECTION 2. AMENDMENT.** Subsections 5, 9, and 10 of section 41-09-42 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement or to obtain information from the system is as follows:

   a. For filing and indexing any statement under the Uniform Commercial Code, five dollars, and when a nonstandard statement is presented for filing, an additional fee of five dollars plus one dollar per page must be made. No additional fee may be charged if the form is filed also to gain protection under the central notice system.

   b. For making certified copies of any recorded instrument, ~~five~~ seven dollars.

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[1] NOTE: Subsections 5, 9, and 10 of section 41-09-42 were also amended by section 17 of House No. 1005, chapter 5.

c. For completing a certificate requesting information, ~~five~~ seven dollars for the first five entries and ~~one dollar~~ two dollars for each additional five entries or fraction thereof.

d. For completing a certificate requesting copies, ~~five~~ seven dollars for the first three copies or fraction thereof, and ~~one dollar~~ two dollars for each additional copy.

e. For furnishing copies only of any filed instrument, one dollar.

9. The fee for furnishing information on a verbal request pursuant to subsection 5 of section 41-09-46 is ~~five~~ seven dollars.

10. The fee for furnishing a certificate pursuant to subsection 5 of section 41-09-46 is ~~five~~ seven dollars.

SECTION 3. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 1995, and after that date is ineffective.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 412

SENATE BILL NO. 2438
(Senators Nelson, Mathern)

SECURITY DOCUMENT REFILING

AN ACT to amend and reenact section 41-09-28.1 of the North Dakota Century Code, relating to refiling of security documents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-28.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-28.1. Transition provision to computerized central notice system. Any security document filed by secured parties or lienholders before January 1, 1992, lapses on June 30, 1992, unless after January 1, 1992, but before June 30, 1992, there is filed in either the office of the secretary of state or the register of deeds a copy of the security document, along with the additional information to be filed pursuant to section 35-17-04, 35-30-02, 35-31-02, or 41-09-40, and all related documents on file. A refiled document must be filed in the office in which the original document was first filed. The order of perfection is governed by the date and the time of filing of the original financing statement or statement of lien. Refiling a lien pursuant to this section does not affect the priority of that lien. No filing fees may be charged or collected for the refiling of any security document pursuant to this section. At the time of the refiling of any security document pursuant to this section, the fee for filing and indexing a termination statement pursuant to subsection 3 of section 41-09-43 must be paid, unless that fee was paid with the original filing of the security document.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 413

SENATE BILL NO. 2425
(Senators Keller, Andrist, Redlin, Robinson)
(Representatives Jacobs, Nelson)

FINANCING STATEMENT REQUIREMENTS

AN ACT to create and enact a new subsection to section 41-09-42 of the North Dakota Century Code, relating to including the social security number or the internal revenue service taxpayer identification number of the debtor in a continuation or amendment of a financing statement under the Uniform Commercial Code central filing system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 41-09-42 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The continuation statement must contain the social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the debtor for all security documents filed or refiled under the transition provisions of section 41-09-28.1 or for any other security document filed or refiled without such debtor identification numbers being included in the security document. The signature of the debtor may not be required and no filing fees may be charged or collected for the filing of any amendment that is limited to including debtor identification numbers to any transition security documents or other security documents filed without the debtor identification numbers as provided herein, if the filing is made within six months of the effective date of this Act.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 414

SENATE BILL NO. 2375
(Senators Kelsh, Tallackson)
(Representatives Austin, Wentz)

COMPUTER EQUIPMENT TRANSFER

AN ACT to provide for transfer of computer equipment to the county register of deeds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of Uniform Commercial Code central indexing system equipment. Title to the computer equipment, facsimile machines, printers, and other equipment purchased by the secretary of state during the 1991-93 biennium for the implementation and operation of the Uniform Commercial Code central indexing system which is installed in county registers of deeds' offices is hereby transferred to the county where it is installed. The transfer of title to the equipment is effective on July 1, 1993. The secretary of state shall inventory all equipment transferred and provide a list of the equipment, the serial number of the equipment, and the initial cost of the equipment transferred to each county register of deeds. Each county shall maintain and upgrade the equipment necessary to continue the operation of the Uniform Commercial Code central indexing system.

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

Approved April 7, 1993
Filed April 8, 1993

OCCUPATIONS AND PROFESSIONS

CHAPTER 415

SENATE BILL NO. 2415
(Senators Goetz, Nething, Redlin)
(Representatives Wardner, Wentz, Wilkie)

ABSTRACTERS CONTINUING EDUCATION

AN ACT to amend and reenact subsection 4 of section 43-01-10 of the North Dakota Century Code, relating to continuing education requirements for abstracters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 4 of section 43-01-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The certificate of registration issued by ~~said~~ the board ~~under the provisions hereof shall~~ must recite~~, among other things,~~ that the holder ~~thereof~~ has complied with this chapter relating to examination or otherwise, and ~~shall entitle~~ entitles the holder of ~~such~~ the certificate of registration to take charge of any abstract office in any county in this state holding a certificate of authority, under ~~the provisions of~~ this chapter. Certificates of registration must be issued upon the payment of a fee fixed by the board not exceeding one hundred dollars and ~~shall be~~ are valid for one year from the date ~~thereof~~ of issuance but ~~shall~~ must be renewed annually by ~~said~~ the board upon application within thirty days ~~prior to~~ before the expiration ~~thereof~~ of the registration upon a payment of a fee fixed by the board not exceeding one hundred dollars to the secretary-treasurer of the board. The board may issue temporary certificates of registration in its discretion. After the effective date of this Act, an applicant for renewal of a registration shall include with the application a report of any continuing education courses attended by the applicant during the previous year. The board shall adopt rules to establish and administer continuing education requirements.

Approved April 7, 1993
Filed April 8, 1993

[1] NOTE: Section 43-01-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 416

SENATE BILL NO. 2377
(Senators Krebsbach, Krauter)
(Representative Mahoney)

ABSTRACTERS' FEES

AN ACT to amend and reenact sections 43-01-15.1 and 43-01-18 of the North Dakota Century Code, relating to abstracters' fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-15.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-15.1. Surface abstracts and mineral abstracts to be furnished upon request. An abstracter shall furnish an abstract of title to the surface of any tract of land, when requested to do so, omitting therefrom all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests except instruments which sever mineral rights or royalties from surface rights. In addition to such surface abstract, an abstracter shall, when requested to do so, furnish a list showing the names of the grantor and grantee and the recording data of all instruments in the chains of title which transfer or convey mineral rights, royalties, or other mineral interests and which are not included in the surface abstract. For each instrument searched and listed, but not included in the surface abstract, an abstracter may charge a fee of one dollar and fifty cents, and no more. When requested to do so, an abstracter shall furnish a mineral abstract of any chain of title to the minerals of any tract of land which shall consist of the instrument severing the mineral rights or royalties from the surface rights and include all instruments of transfer or conveyance of mineral rights, royalties, and other mineral interests. If requested, such mineral abstract may be combined with a surface abstract of all instruments affecting title to the tract of land to and including the instrument severing the mineral rights, royalties, or other mineral interests being abstracted.

SECTION 2. AMENDMENT. Section 43-01-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-18. Fees chargeable by abstracter. An abstracter may charge the following fees, and no more for making and certifying to an abstract:

1. For each entry on an abstract or continuation thereof, ~~four~~ five dollars.
2. For a complete certification covering the records of the several county offices, ~~fifty~~ sixty dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of ~~seven~~ nine dollars ~~and fifty cents~~, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.

4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of ~~seven~~ nine dollars ~~and fifty cents~~, for such premises in each additional block in excess of one, may be charged.

5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanics' liens and mechanics' lien notices, ~~two~~ three dollars and fees charged to the abstracter by governmental agencies or governmental entities.

6. For all miscellaneous instruments, ~~one dollar and fifty cents~~ two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.

7. Such fees as may be fixed by special statute.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 417

SENATE BILL NO. 2071
(Industry, Business and Labor Committee)
(At the request of the State Board of Public Accountancy)

ACCOUNTANCY PRACTICE

AN ACT to provide for the issuance of certificates as certified public accountants and the issuance of permits to practice public accountancy, to regulate the practice of public accountancy in the public interest, and to establish a state board of accountancy and prescribe its powers and duties; and to repeal chapter 43-02.1 of the North Dakota Century Code, relating to public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Title. This Act may be cited as the "Accountancy Act of 1993".

SECTION 2. Purpose. It is the policy of this state, and the purpose of this Act, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. Public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information have demonstrated or maintained their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications, including certificate holders not in public practice, not be permitted to hold themselves out as having such special competence or to offer such assurance. Public interest requires that the professional conduct of persons licensed as having special competence in accountancy be regulated in all aspects of the practice of public accountancy. Public interest requires that a public authority competent to prescribe and assess the qualifications and to regulate the professional conduct of practitioners of public accountancy and certificate holders not in public practice be established and that the use of titles relating to the practice of public accountancy which are likely to mislead the public as to the status or competence of the persons using such titles be prohibited.

SECTION 3. Definitions. As used in this Act, unless the context requires otherwise:

1. "Board" means the state board of accountancy.
2. "Certificate" means a certificate as "certified public accountant" issued under section 5 of this Act or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.

4. "Licensee" means the holder of a certificate issued under section 5 of this Act, a permit issued under section 6 or 7 of this Act, or a certificate or permit issued under prior law.

5. "Permit" means a permit to practice public accountancy issued under section 6 or 7 of this Act, prior law, or corresponding provisions of the laws of other states.

6. "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or firm holding out to the public as a licensee, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

7. "Practice review" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and are in the practice of public accounting and who are not affiliated with the person or firm being reviewed.

8. "Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is an accountant, auditor, or is in the business of accounting, or from the language of the report. "Report" includes any form of language that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

9. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.

10. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

SECTION 4. State board of accountancy.

1. The state board of accountancy consists of five members appointed by the governor. Four members of the board must be residents of this state who hold certified public accountant certificates issued under the laws of this state and one member of the board must be a resident of this state who is a licensed public accountant under the laws of this state. When the number of licensed public accountants in this state drops below twenty-five, the licensed public accountant member requirement ceases to

apply, except that the licensed public accountant then serving on the board may complete that term of office and thereafter the board shall consist of five certified public accountants. The terms of office must be arranged so that only one term expires each year on June thirtieth. Successor board member appointments are for terms of five years. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. A vacancy on the board must be filled by appointment by the governor from a list of at least three nominees submitted by the appropriate nominating committee. Any member of the board whose certificate or permit is revoked or suspended automatically ceases to be a member of the board. The governor may remove any member of the board for neglect of duty or other just cause, after a hearing. No person who has served two consecutive complete terms is eligible for reappointment, but appointment to fill an unexpired term may not be considered a complete term for this purpose.

2. At its first meeting after June thirtieth in each year, the board shall organize by electing one of its members as president, one as secretary, and one as treasurer. The offices of secretary and treasurer may be held by one person. A majority of the board constitutes a quorum.

3. A member of the board is entitled to compensation in an amount to be fixed by the board for each day or portion of a day spent in the discharge of duties, mileage as provided under section 54-06-09, and reimbursement for actual and necessary expenses incurred in the discharge of official duties.

4. All expenses incident to examinations under this chapter, expenses of preparing and issuing certificates and licenses, travel expenses and other allowable expenses of the members of the board, and stationery, printing, clerk hiring, and other office expenses must be paid by the board from the fees collected by it, and no expense incurred under this chapter may be a charge against the funds of this state. Funds administered by the board may not revert to the state general fund.

5. The board has the following powers:

   a. To administer oaths to all applicants or persons appearing before it in respect to investigations, examinations, or the issuance of certified public accountant certificates.

   b. To conduct investigations and examinations and issue certificates and licenses to properly qualified accountants.

   c. To determine the qualifications of all applicants.

   d. To employ and establish the salary of an executive director and such other personnel as it deems necessary in administration and enforcement of this Act. The board may appoint committees or persons, including counsel, to advise or assist the board.

   e. To take all action that is necessary and proper to effectuate the purposes of this chapter, including the power to sue and be sued in its official name as an agency of this state, to issue subpoenas to

compel the attendance of witnesses and the production of documents, to administer oaths, to take testimony, and to receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence. The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's responsibilites.

f. The board may adopt rules governing its administration and enforcement of this chapter and the conduct of licensees, including:

(1) Rules governing the board's meetings and the conduct of its business;

(2) Rules of procedure governing the conduct of investigations and hearings by the board;

(3) Rules specifying the educational qualifications required for the issuance of certificates under this chapter and the continuing professional education required for renewal of certificates and permits;

(4) Rules of professional conduct including rules relating to independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;

(5) Rules specifying actions and circumstances that must be deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;

(6) Rules governing the manner and circumstances of use, by holders of certificates who do not also hold permits under this Act, of the titles "certified public accountant", "CPA", "licensed public accountant", and "LPA";

(7) Rules regarding practice reviews that may be required to be performed under this Act; and

(8) Other rules the board deems necessary or appropriate for implementing this chapter.

SECTION 5. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any resident who meets the requirements of this section.

2. The board may refuse to grant a certificate on the grounds of a history of dishonest or felonious acts only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence

upon which the determination was based, and a notice of the applicant's right of appeal.

3. The board shall issue a certificate to a holder of a certificate issued by another state, provided that that state extends similar reciprocity to the certificate holders of this state, and upon a showing that:

   a. The applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this state;

   b. The applicant:

      (1) Meets all current requirements except residence in this state for issuance of a certificate, at the time application is made; or

      (2) At the time of the issuance of the applicant's certificate in the other state, met all such requirements except residence then applicable in this state;

   c. The applicant meets the requirements of section 6 of this Act, if applying for a permit.

   d. The applicant has paid the applicable fees.

4. The board shall issue a certificate to a holder of a recognized professional accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:

   a. Meets the good character requirement of subsection 2;

   b. Meets the substantial equivalent of the education requirements of subsection 5 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education or experience requirements then applicable in this state;

   c. Has completed examinations generally equivalent to those prescribed under subsection 6;

   d. Has satisfactorily completed any additional examinations that the board prescribes;

   e. Has paid the applicable fees; and

   f. Meets the requirements of section 6 of this Act, if applying for a permit.

5. The education requirement for a certificate is as follows:

   a. Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's

own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.

b. After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board rule to be appropriate.

6. The examinations required to be passed as a condition for the granting of a certificate must be in writing and must test the applicant's knowledge of the subjects of accounting and auditing. A grade of seventy-five percent is required in each subject to constitute a passing grade. The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the examinations, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties.

7. An applicant must pass all sections of the examination provided for in subsection 6 in order to qualify for a certificate. If at a given sitting of the examination an applicant passes two or more but not all sections, then the applicant must be given credit for those sections passed and need not sit for reexamination in those sections, provided that:

a. The applicant wrote all sections of the examination at that sitting;

b. The applicant attained a minimum grade of forty percent on each section not passed at that sitting but this requirement does not apply to an applicant who has passed three sections at a given sitting;

c. The applicant passes the remaining sections of the examination within the six consecutive examinations given after the one at which the first sections were passed;

d. At each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections not yet passed; and

e. In order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of forty percent on sections written but not passed on such sitting.

8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.

9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.

10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for each section of the examination or reexamination taken by the applicant.

11. A certificate of certified public accountant must be issued and renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.

12. The board may require examination of other related subjects as specified by rule.

13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized professional accounting designations, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized professional accounting designation by another state or jurisdiction.

SECTION 6. Permits to practice - Individual.

1. The board shall grant or renew permits to practice public accountancy to persons who possess a valid North Dakota certificate, or who are licensed public accountants of this state, and who make application and demonstrate their qualifications in accordance with this section.

2. Permits must be issued and renewed on an annual basis. Applications for permits must be made in the form the board specifies. The board shall grant or deny any application no later than ninety days after the application is filed in proper form. If the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied, or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which expires ninety days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever occurs first.

3. For issuance and renewal of a permit under this section an applicant must show completion of one hundred twenty hours of continuing professional education during the last three-year period, with a minimum of twenty-four hours each year. The board may prescribe by rule the content, duration, and organization of continuing professional education courses which contribute to the general professional competence of the applicant. The board may provide by rule for prorated continuing professional education requirements to be met by applicants whose certificates were issued less than three years before the permit issuance or renewal date. The board may also prescribe by rule special requirements to be met by applicants

for permit renewal whose prior permits lapsed before their applications for renewal and for those applicants who have received reciprocal certificates less than three years before the application for permit issuance or renewal.

4. The board shall charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

5. Applicants for initial issuance or renewal of permits under this section shall in their applications list all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized professional accounting designations, and each holder of or applicant for a permit under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized professional accounting designation by another state or jurisdiction.

SECTION 7. Permits to practice - Firms.

1. Each firm that engages in the practice of public accounting must hold a firm permit to practice. The board shall grant or renew permits to practice public accountancy to firms that make application and demonstrate their qualifications in accordance with this section.

2. Permits must be issued and renewed on an annual basis. Applications for permits must be made in the form the board specifies. The board shall grant or deny any application no later than ninety days after the application is filed in proper form. If the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which expires ninety days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever occurs first.

3. An applicant for initial issuance or renewal of a permit to practice under this section must show that each partner, officer, or shareholder who regularly works in this state, and each employee who holds out as a licensee and who regularly works in this state, holds a valid individual permit to practice issued under section 6 of this Act or the corresponding provision of prior law and that each other partner, officer, or shareholder holds a certificate or similar professional accounting designation and is licensed to practice public accountancy in some other state or jurisdiction.

4. An applicant for initial issuance or renewal of a permit to practice under this section is required to register each office of the firm within this state with the board and to show that each office is under the charge of a person holding a valid permit to practice issued under section 6 of this Act or the corresponding provision of prior law.

5. The board shall charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

6. Applicants for initial issuance or renewal of permits under this section shall in their applications list all states and jurisdictions in which they have applied for or hold permits to practice public accountancy or similar authorizations, and each holder of or applicant for a permit under this section shall notify the board in writing, within thirty days after its occurrence, of any change in the identities of partners, officers, or shareholders who work regularly within this state, any change in the number or location of offices within this state, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state or jurisdictions.

7. The board may require by rule, on either a uniform or a random basis, as a condition to renewal of permits under this section, that applicants undergo practice reviews conducted no more frequently than once every three years in such manner and producing such satisfactory result as the board specifies; provided that any such requirement must be adopted reasonably in advance of the time when it is first required to be met and must include reasonable provision for compliance by an applicant's showing that it has undergone a satisfactory review performed for other purposes which was substantially equivalent to practice reviews generally required under this subsection and completion of such review was within the three years immediately preceding the renewal period.

SECTION 8. Licensed public accountants and firms of public accountants. Persons and firms who on the effective date of this Act hold registrations as licensed public accountants issued under prior law of this state are entitled to have permits to practice granted and renewed under sections 6 and 7 of this Act provided that they fulfill all requirements for renewal under those provisions. If such licensees hold valid permits to practice under sections 6 and 7 of this Act, they are entitled to engage in the practice of public accountancy to the same extent and with the same requirements as other holders of such permits and are entitled to use the designations "licensed public accountant" and "LPA", but no other designation, in connection with the practice of public accountancy. Licensed public accountant licenses and permits must be renewed annually, with renewal subject to payment of fees and any other requirements prescribed by the board.

SECTION 9. Appointment of secretary of state as agent. Application by a person or a firm not a resident of this state for a certificate under section 5 of this Act or a permit to practice under section 6 or 7 of this Act constitutes appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of public accountancy by the applicant within this state.

SECTION 10. Enforcement against holders of certificates and permits.

1. The board may revoke any certificate or permit issued under section 5,6, or 7 of this Act or corresponding provisions of prior law; suspend any such certificate or permit or refuse to renew any such certificate or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding one thousand dollars; or place any licensee on probation,

all with or without terms, conditions, and limitations, for any one or more of the following reasons:

a. Fraud or deceit in obtaining a certificate or permit;

b. Cancellation, revocation, suspension, or refusal to renew authority to engage in the practice of public accountancy in any other state for any cause;

c. Failure, on the part of a holder of a certificate or permit, to maintain compliance with the requirements for issuance or renewal of such certificate or permit or to report changes to the board under sections 5, 6, or 7 of this Act;

d. Revocation or suspension of the right to practice before any state or federal agency;

e. Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the filing or failure to file the certificate or permitholder's own income tax returns;

f. Violation of any provision of this chapter or rule adopted by the board under this chapter;

g. Violation of any rule of professional conduct adopted by the board under section 4 of this Act;

h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;

i. Performance of any fraudulent act while holding a certificate or permit issued under this chapter or prior law; and

j. Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy.

2. In lieu of or in addition to any remedy specifically provided in subsection 1, the board may require of a licensee either or both of the following:

a. A practice review conducted as the board specifies.

b. Satisfactory completion of continuing professional education programs the board specifies.

3. In any proceeding in which a remedy provided by subsection 1 or 2 is imposed, the board may require the respondent licensee to pay the costs of the proceeding.

SECTION 11. Enforcement procedures - Investigations. If this chapter authorizes the board to revoke, deny, or suspend the certificate, license, or permit of any licensee, the licensee has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32

relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. During the investigation of any complaint or other information suggesting violations of this chapter, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of the pending investigation must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

SECTION 12. Reinstatement.

1. If the board has suspended or revoked a certificate or a permit or refused to renew a certificate or permit, the board may modify the suspension or reissue the certificate or permit upon application in writing by the person or firm affected and for good cause shown and payment of a fee established by the board.

2. The board shall specify by rule the manner in which applications for reinstatement must be made, the times within which they must be made, and the circumstances in which hearings on applications will be held.

3. Before reissuing or terminating the suspension of a certificate or permit under this section, the board may require the applicant to show successful completion of specified continuing professional education and may make the reinstatement of a certificate or permit conditional and subject to specified conditions, including satisfactory completion of a practice review conducted as specified by the board.

SECTION 13. Unlawful acts.

1. A person or firm not holding a valid permit issued under section 6 or 7 of this Act may not issue a report on financial statements of any other person, firm, organization, or governmental unit. This prohibition does not apply to an officer, partner, or employee of any firm or organization affixing a signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".

2. The prohibition contained in subsection 1 is applicable to issuance, by a person or firm not holding a valid permit, of a report using any form of language conventionally used by licensees respecting a review of financial statements.

3. The prohibition contained in subsection 1 is applicable to issuance by a person or firm not holding a valid permit of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements.

4. A person not holding a valid certificate may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.

5. A firm may not assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants, unless the firm holds a valid permit issued under section 7 of this Act, and all partners, officers, and shareholders of the firm hold certificates.

6. A person may not assume or use the title or designation "licensed public accountant" or the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a licensed public accountant unless the person is registered as provided in section 8 of this Act.

7. A firm may not assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of licensed public accountants unless the firm holds a valid permit issued under section 7 of this Act and all partners, officers, and shareholders of the firm are licensed public accountant registrants.

8. A person or firm not holding a valid permit issued under section 6 or 7 of this Act may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "public accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "EA", "LA", "PA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA". A holder of a certificate who does not also hold a permit may use the titles pertaining to the certificate in any manner not prohibited by rules adopted by the board under section 4 of this Act.

9. A person or firm not holding a valid permit issued under section 6 or 7 of this Act may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a permit or has special competence as an accountant or auditor. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds and does

not prohibit any act of a public official or employee in the performance of duties.

10. A person holding a certificate may not engage in the practice of public accountancy unless the person also holds a valid permit issued under section 6 of this Act.

11. A person or firm holding a permit under this Act may not engage in the practice of public accountancy using a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter. Names of one or more former partners or shareholders may be included in the name of a firm or its successor.

12. This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country, whose activities in this state are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person or firm holds such entitlement. This subsection does not authorize issuing reports with respect to the financial statements of any other persons, firms, or governmental units in this state. A person or firm acting under the authority of this subsection may not use in this state any title or designation other than the one under which the person or firm practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

SECTION 14. Injunctions against unlawful acts. If as a result of an investigation, the board believes that any person or firm has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of this chapter, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person or firm has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other appropriate order must be granted by the court.

SECTION 15. Criminal penalties.

1. If by reason of an investigation, the board has reason to believe that any person or firm has knowingly engaged in acts or practices that constitute a violation of this Act, the board may bring its information to the attention of a state's attorney or the attorney general or other appropriate law enforcement officer who may cause appropriate criminal proceedings to be brought.

2. Any person or firm who knowingly violates any provision of section 13 of this Act is guilty of a class A misdemeanor.

SECTION 16. Single act evidence of practice. In any action brought under section 10, 11, 13, 14, or 15 of this Act, evidence of the commission of a single act prohibited by this Act is sufficient to justify a penalty which must include revocation, suspension, refusal to renew, reprimand, censure, fine, probation,

injunction, restraining order, or conviction or any combination of these penalties, without evidence of a general course of conduct.

SECTION 17. Confidential communications. Except by permission of the client engaging a licensee under this chapter, or the heirs, successors, or personal representatives of such client, a licensee or any partner, officer, shareholder, or employee of a licensee may not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee in the practice of public accountancy. Such information is deemed confidential but this section may not be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under section 10 or 11 of this Act, in ethical investigations conducted by private professional organizations, or in the course of practice reviews.

SECTION 18. Licensees' working papers - Clients' records.

1. All statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, or employee of a licensee, incident to, or in the course of, rendering services to a client in the practice of public accountancy, except the reports submitted by the licensee to the client and except for records that are part of the client's records, are the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. A statement, record, schedule, working paper, or memorandum may not be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners or stockholders or new partners or stockholders of the licensee, or any combined or merged firm or successor in interest to the licensee. This section may not be construed as prohibiting any temporary transfer of workpapers or other material necessary in the course of carrying out practice reviews.

2. A licensee shall furnish to a client or former client, upon request and reasonable notice:

   a. A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

   b. Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

3. This section does not require a licensee to keep any workpaper beyond the period prescribed in any other applicable statute.

SECTION 19. Uniform statute of limitations.

1. a. This section applies to all causes of action of the type specified in this section filed on or after the effective date of this Act.

b. This section governs any action based on negligence or breach of contract brought against any accountant, any partnership of accountants, any accounting corporation, or any other legal entity of accountants registered, licensed, or practicing in this state by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited, or otherwise reported or opined on by the defendant accountant as a result of an engagement to provide public accounting services.

2. An action covered by this section may not be brought in any court in this state unless the suit is commenced on or before the earlier of:

   a. Two years from the date the alleged act, omission, or neglect is discovered or should have been discovered by the exercise of reasonable diligence; or

   b. Six years after the service for which the suit is brought has been performed or the date of the initial issuance of the accountant's report on the financial statements or other information, whichever comes first.

SECTION 20. REPEAL. Chapter 43-02.1 of the North Dakota Century Code is repealed.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 418

SENATE BILL NO. 2474
(Senators Graba, Nalewaja)
(Representatives A. Carlson, Mahoney, Tollefson)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-04 and 43-07-10 of the North Dakota Century Code, relating to contractor licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the names of three persons who are knowledgeable about the applicant's experience and qualifications. A bond, as ~~hereinafter~~ prescribed in section 43-07-11, and a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. Any person refused a license by the registrar may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state.

SECTION 2. AMENDMENT. Section 43-07-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **43-07-10. Renewal of license - Time requirements - Revocation of license for failure to renew.** Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, accompanied by two copies of a listing of each contract or subcontract obtained by the licensee during the preceding fiscal year in this state over the amount of ten thousand dollars, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation or other person who issued the bond. The registrar shall within a reasonable time forward one copy of the list to the state tax commissioner and shall

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[1] NOTE: Section 43-07-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

also indicate whether the license of the applicant was renewed by the registrar. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal. The application for a certificate of renewal must be made to the registrar on or before the first day of February of each successive fiscal year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued to the contractor, the new license may be issued only upon the showing, under the terms and conditions, and upon the payment of the fee required for the issuance of an original license of the class applied for. All certificates of renewal in which the applicant does not apply for a change in the class of license must be issued by the registrar to the applicant when the application is properly filed and the renewal fee is paid. If any contractor fails to file an application for a certificate of renewal when due, the registrar shall revoke the contractor's license. The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline. The contractor may then renew the license within ninety days after the filing deadline by paying a penalty fee of twenty-five percent of the license fee set forth in section 43-07-07, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation and waiting period prescribed in section 43-07-09.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 419

HOUSE BILL NO. 1157
(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

CONTRACTOR LICENSING AND NAME CHANGE

AN ACT to create and enact a new section to chapter 43-07 of the North Dakota Century Code, relating to change of a contractor's name; and to amend and reenact sections 43-07-09, 43-07-14, 43-07-15, and 43-07-17 of the North Dakota Century Code, relating to contractor licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-07 of the North Dakota Century Code is created and enacted as follows:

Name changes. Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation registered with the secretary of state is not subject to this section.

SECTION 2. AMENDMENT. Section 43-07-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. The registrar shall investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of ten days ~~from and~~ after ~~the filing of the application~~ the date the registrar receives all documentation necessary to obtain a license. A copy of the required documentation sent by facsimile also commences the counting of the ten-day waiting period but a license may not be issued until original copies of all the documents and the appropriate fee is received by the registrar. The license issued on an original application shall entitle the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending February first.

SECTION 3. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license cancellation. Any person may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract,

and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.

3. The doing of any willful fraudulent act by the licensee as a contractor in consequence of which another is injured substantially.

4. The making of any false statement in any application for a license or renewal thereof.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 4. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. Cancellation of license - Appeal - Procedure. Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, meets the requirements of subsection 1 of section 28-32-05. If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, he shall cancel or suspend the contractor's license. A contractor aggrieved by a decision of the registrar in suspending or canceling his license may appeal such decision to the district court of his county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of cancellation or revocation. A "licensee" whose license is canceled or revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 shall govern ~~such~~ any appeal and proceedings ~~thereunder~~ hereunder.

SECTION 5. AMENDMENT. Section 43-07-17 of the North Dakota Century Code is amended and reenacted as follows:

43-07-17. Cancellation of license - Relicensing. A licensee whose license has been canceled ~~shall~~ may not be relicensed during the current calendar year in which ~~he has committed the offense for which such cancellation was ordered, unless the registrar has ordered suspension of the license for a specific period of time~~ the decision to cancel the license was made.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 420

SENATE BILL NO. 2074
(Industry, Business and Labor Committee)
(At the request of the State Board of Funeral Service)

FUNERAL SERVICE PRACTITIONERS LICENSING

AN ACT to create and enact a new section to chapter 43-10 of the North Dakota Century Code, relating to continuing education requirements for funeral service practitioners; and to amend and reenact sections 43-10-13, 43-10-15, 43-10-21, and 43-10-22 of the North Dakota Century Code, relating to licensure fees for funeral service practitioners and funeral establishments and the definition of funeral establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-10-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed. The board shall grant a license to practice funeral service or preparing dead human bodies for burial or shipment, if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board a sum of not more than ~~seventy-five~~ one hundred dollars, as established by the board.

The license must be signed by a majority of the board, be attested by the board's seal, and specify by name the person to whom it is issued. A license is nonassignable and nontransferable and must be displayed by the licensee in a conspicuous place in the licensee's office or place of business.

SECTION 2. AMENDMENT. Section 43-10-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-15. License - Term - Renewal - Fee for renewal. A license to practice funeral service or preparing dead human bodies for burial is valid for one year and may be renewed by the board upon the payment to the treasurer of the annual renewal fee before December thirty-first of each year. The amount of the fee may not exceed ~~fifty~~ one hundred dollars. The board may refuse to renew a license for cause.

SECTION 3. AMENDMENT. Section 43-10-21 of the North Dakota Century Code is amended and reenacted as follows:

43-10-21. Definition. As used in sections 43-10-21 through 43-10-24, the term "funeral establishment" shall mean a place of business situated at a specific street address or location, and used in the care and preparation for burial, transportation, or other disposition of dead human bodies, or used for the purpose

of conducting funeral services~~, but shall not include a~~. A branch establishment ~~used only for layouts or funerals~~ is a funeral establishment and must be independently licensed.

SECTION 4. AMENDMENT. Section 43-10-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-22. Licensure of funeral establishments. A person may not operate or manage a funeral establishment without a funeral establishment license issued by the board for each place of business. A funeral establishment may not be located on tax-exempt property. A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than ~~fifty~~ one hundred dollars, as established by the board. A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of a license with a renewal fee of not more than ~~fifty~~ one hundred dollars, as established by the board. A license is valid until the following January first, unless sooner revoked. An application must show that the funeral establishment has complied with all rules adopted by the board in regard to safety and sanitation and will be under the supervision of a North Dakota licensed embalmer and funeral director. An applicant who has met these standards must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of an estate, the board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which may not exceed two years. The fee for the temporary license is the same as required for regular licenses.

SECTION 5. A new section to chapter 43-10 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board may adopt rules establishing requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 421

SENATE BILL NO. 2113
(Industry, Business and Labor Committee)
(At the request of the State Board of Optometry)

OPTOMETRIST LICENSING

AN ACT to amend and reenact sections 43-13-16, 43-13-17, 43-13-18, 43-13-19, 43-13-20, and 43-13-22 of the North Dakota Century Code, relating to licensing of optometrists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-16. Examination required - When given. Before any person is granted a license to practice optometry in this state, the person must pass an examination ~~given~~ required by the board. The examination may be conducted ~~by four or more of the professional members of the board~~ at such times and places as are prescribed by ~~it~~ the board.

SECTION 2. AMENDMENT. Section 43-13-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-17. Application for examination - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for a license to practice optometry in this state shall file with the secretary of the board, at least five days before the date of the examination, a written application for examination. The application must be accompanied by the affidavits of two ~~freeholders~~ residents of this state to the effect that the applicant is of good moral character. The applicant also shall furnish satisfactory proof that the applicant:

1. Is at least eighteen years of age;
2. Has attended high school for four years or has the equivalent of such an education; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education of the American optometric association.

Before ~~beginning the examination~~ receiving a license, the applicant shall pay to the secretary of the board ~~a sum fixed by the board, but not to exceed two hundred dollars~~ a registration fee of a reasonable sum fixed by the board.

SECTION 3. AMENDMENT. Section 43-13-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-18. When examination not required. An applicant may secure a license to practice optometry in this state without taking the required examination upon:

1. Presentation of a certified copy or an original certificate of registration or license issued to him by another state where the requirements for license are equivalent to those of this state and where like privileges are accorded to holders of licenses issued in this state; and

2. Payment of a ~~sum fixed by the board, but not to exceed two hundred dollars~~ reasonable sum fixed by the board.

The board may give a practical examination to the applicant if it is deemed necessary.

SECTION 4. AMENDMENT. Section 43-13-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-19. License - When issued - Fee - Failure to pass examination - Reexamination. Every applicant for a license to practice optometry in this state who successfully passes the required examination ~~given by the board~~ shall receive a license and must be licensed upon payment to the secretary of the board ~~the sum of twenty-five dollars~~ a reasonable sum fixed by the board. If the applicant fails to pass the first examination, within fourteen months thereafter, the applicant may have another examination upon the payment of fifty percent of the current application fee. The examination must be given at such time and place as may be designated by the board.

SECTION 5. AMENDMENT. Section 43-13-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-20. Term of license - Renewal - Annual license fee - Continuing educational requirements. A license to practice optometry in the state may be issued for one year only, but may be renewed by paying to the secretary of the board, during the month of January of each year, the license fee for that year, and as of January 1, 1974, by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend such education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend such education programs during a year, which proof shall include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend such educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and ~~may not exceed two hundred dollars~~ be a reasonable sum fixed by the board. The board shall adopt reasonable rules which must state the type of optometric educational programs which are approved. The board shall also designate the number of classroom hours which must be attended, which ~~may not exceed sixty within~~ will be a reasonable amount for each three-year period. Any person who does not meet these requirements by February first of the year in which the license fee becomes due and payable is in default and may be reinstated by the board upon the payment of an additional sum ~~of twenty-five dollars~~ reasonably fixed by the board, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. Nothing contained herein requires an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

SECTION 6. AMENDMENT. Section 43-13-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-22. License - When revoked. The board may revoke or suspend any license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the holder of the license:

1. Has violated any provisions of this chapter, the rules and regulations of the board, or committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;

2. ~~Is an habitual drunkard;~~

~~3.~~ Has prescribed, sold, administered, distributed, or given any drug legally classified as a controlled substance or as an addictive or dangerous drug;

~~4.~~ 3. Has been addicted to the excessive use of intoxicating liquor or a controlled substance for at least six months immediately prior to the filing of the charges;

~~5.~~ 4. Is ~~permanently~~ afflicted with any contagious or infectious disease;

~~6.~~ 5. Is grossly incompetent to discharge the holder's duties in connection with the practice of optometry;

~~7.~~ 6. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or

~~8.~~ 7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than one who holds a valid unrevoked license as an optometrist in this state and who has an actual legal residence within this state.

Any person whose license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that the disability has been removed and upon such conditions as established by the board.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 422

SENATE BILL NO. 2213
(Industry, Business and Labor Committee)
(At the request of the Board of Pharmacy)

PHARMACIST PRACTICE

AN ACT to create and enact five new subsections to section 43-15-01, and a new subsection to section 43-15-10 of the North Dakota Century Code, relating to definitions, confidentiality, and a patient bill of rights under pharmacist laws; and to amend and reenact subsections 14 and 16 of section 43-15-01, sections 43-15-03, 43-15-06, 43-15-09, subsections 1, 2, and 3 of section 43-15-10, subsections 1 and 2 of section 43-15-13.2, sections 43-15-13.3, 43-15-13.4, subsection 1 of section 43-15-14, sections 43-15-15, 43-15-16, 43-15-18, 43-15-18.1, 43-15-19, 43-15-20, 43-15-21, 43-15-22, 43-15-25, subsections 1 and 2 of section 43-15-25.1, sections 43-15-26, 43-15-27, subsections 1 and 3 of section 43-15-28.1, sections 43-15-29, 43-15-30, 43-15-31, 43-15-31.2, 43-15-31.3, 43-15-33, subsections 4 and 5 of section 43-15-35, and subsections 1 and 2 of section 43-15-42.1 of the North Dakota Century Code, relating to the practice of pharmacy, the board of pharmacy, and licensing of pharmacists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsections 14 and 16 of section 43-15-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

14. "Pharmacist" means a person to whom the board has issued a ~~certificate of registration~~ license to practice the profession of pharmacy whose ~~certificate~~ license has not expired, or been suspended.

16. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary to provide pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, consulting, and educating where necessary or where regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other

[1] NOTE: Subsection 16 of section 43-15-01 was also amended by section 1 of Senate Bill No. 2444, chapter 423.

pertinent laboratory data to design safe and effective drug dosage regimens; where appropriate and where regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

SECTION 2. Five new subsections to section 43-15-01 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

"Administer" means the direct application of a drug to the body of a patient. The term includes the initial application of a drug for the purpose of teaching utilization of a drug and excludes the regular ongoing delivery to the patient in a health care setting and parenteral administration of a drug.

"Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

a. As the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice; or

b. For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

"Confidential information" means information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling, which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being, and to such other persons or governmental agencies authorized by law to receive such confidential information.

"Drug regimen review" includes the following activities:

a. Evaluation of the prescription drug orders and patient records for:

(1) Known allergies;

(2) Rational therapy-contraindications;

(3) Reasonable dose and route of administration; and

(4) Reasonable directions for use.

b. Evaluation of the prescription drug orders and patient records for duplication of therapy.

c. Evaluation of the prescription drug orders and patient records for interactions:

(1) Drug-drug;

(2) Drug-food;

(3) Drug-disease; and

(4) Adverse drug reactions.

d. Evaluation of the prescription drug orders and patient records for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.

"Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

SECTION 3. AMENDMENT. Section 43-15-03 of the North Dakota Century Code is amended and reenacted as follows:

43-15-03. Board of pharmacy - Appointment - Qualifications. The state board of pharmacy shall consist of five members appointed by the governor upon the recommendation of the North Dakota pharmaceutical association. The persons appointed shall be ~~registered~~ licensed pharmacists and members of such association.

SECTION 4. AMENDMENT. Section 43-15-06 of the North Dakota Century Code is amended and reenacted as follows:

43-15-06. Organization of board ~~- Officers who act in place of those elected~~.

1. At the first regular meeting of the board after the appointment and qualification of a new member for a full term, the board shall elect a president, a secretary, and a treasurer. The president shall be chosen from the membership of the board, but any suitable person, whether a member of the board or not, may be chosen for the other offices. In case of the death, removal, resignation, absence, or refusal or inability to act of the president of the board, the senior member present shall act as president. In case of the death, removal, resignation, absence, or refusal or inability to act of the secretary or treasurer, the board may choose another person to act temporarily or for the remainder of the year. The president of the board of pharmacy shall preside at all meetings of the board and is responsible for the performance of all of the duties and functions of the board required or permitted by this chapter. Each additional officer elected by the board shall perform those duties

normally associated with the officer's position and such other duties assigned from time to time by the board.

2. The board shall employ a pharmacist to serve as a full-time employee of the board in the position of executive director. The executive director is responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The executive director may also serve as secretary and treasurer of the board.

3. The executive director is authorized to sign on behalf of the board notices, complaints, statement of charges, stipulations, settlement agreements, findings of fact, conclusions of law, orders and decisions of the board without additional signatures of the president of the board or board members.

SECTION 5. AMENDMENT. Section 43-15-09 of the North Dakota Century Code is amended and reenacted as follows:

43-15-09. Meetings - When held - Notice - Quorum. The board shall hold at least two and not more than four meetings in each calendar year for the examination of applicants for ~~registration~~ licensure. The board may hold such other meetings as may be necessary for the performance of its duties. A special meeting shall be held at such time and place as a majority of the members agree upon, or may be called by the secretary, at the request of the president or any two members, by giving such notice to the members as the board may prescribe by its rules and regulations. A majority of the board shall constitute a quorum for the transaction of business.

SECTION 6. AMENDMENT. Subsections 1, 2, and 3 of section 43-15-10 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. To place on probation, reprimand, or fine any pharmacy, pharmacist, or ~~registered~~ licensed pharmacist; or refuse to issue or renew, or suspend, revoke, restrict, or cancel, the ~~certificate of registration~~ license, permit, or license of any pharmacy, pharmacist, or ~~registered~~ licensed pharmacist, if any of the following grounds apply and the pharmacy, pharmacist, or ~~registered~~ licensed pharmacist:

   a. Is addicted to any alcohol or drug habit.

   b. Uses any advertising statements of a character tending to deceive or mislead the public.

   c. Is subject to drug or alcohol dependency or abuse.

   d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.

   e. Permits or engages an unauthorized person to practice pharmacy.

   f. Is mentally or physically incompetent to handle ~~his~~ pharmaceutical duties.

   g. Is guilty of fraud, deception, or misrepresentation in passing the pharmacist examination.

h. Is found by the board in violation of any of the provisions of the laws regulating drugs, pharmacies, and pharmacists or the rules and regulations established by the board.

i. Is found to have engaged in unprofessional conduct as that term is defined by the rules of the board.

j. Is subject to incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.

k. Is found guilty by a court of competent jurisdiction of one or more of the following:

(1) A felony, as defined by the statutes of North Dakota.

(2) Any act involving moral turpitude or gross immorality.

(3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.

l. Commits fraud or intentional misrepresentation in securing the issuance or renewal of a ~~certificate of registration~~ license or pharmacy permit.

m. Sells, dispenses, or compounds any drug while on duty and while under the influence of alcohol or while under the influence of a controlled substance without a practitioner's prescription.

n. Divulges or reveals confidential information to an unauthorized person.

2. To prescribe rules and regulations not inconsistent with this chapter governing the cancellation or suspension of a ~~certificate of registration~~ license.

3. To examine and ~~register~~ license as pharmacist any applicant found entitled to such ~~registration~~ license.

SECTION 7. A new subsection to section 43-15-10 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The board shall establish a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 43-15-13.2 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Who has secured a current annual ~~certificate of registration~~ license to practice pharmacy in this state in accordance with this chapter.

2. Who has paid an annual membership fee directly to the association as determined and permitted by the association and who does not hold a

current ~~certificate of registration~~ license to practice pharmacy in this state.

SECTION 9. AMENDMENT. Section 43-15-13.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-13.3. Rights of members of pharmaceutical association. The members of the association who have secured a current annual ~~certificate of registration~~ license to practice pharmacy in this state are entitled to all of the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all of the meetings of the association. The members of the association who have not secured a current annual ~~certificate of registration~~ license to practice pharmacy in this state are entitled to all of the rights and privileges of the association, except that they may not vote at the meetings or serve as an officer or director of the association.

SECTION 10. AMENDMENT. Section 43-15-13.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-13.4. Moneys payable from board of pharmacy to North Dakota pharmaceutical association. The association shall annually receive fifty percent of fees received by the board for renewal ~~certificates of registration~~ licenses as a pharmacist in this state. The association may use the funds for payment of expenses of the association including continuing pharmaceutical education, pharmacist discipline, the impaired pharmacist program, matters related to pharmacist registration standards, professional service standards, and general operating expenses. The amount provided in this section must be paid quarterly to the association by the board. The association may not receive from the board any portion of fees from out-of-state pharmacists who do not have a renewal ~~certificate of registration~~ license to practice pharmacy in this state and may not receive any portion of examination fees, permit fees, or other fees or funds not specified in this section.

SECTION 11. AMENDMENT. Subsection 1 of section 43-15-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Applicability. No person may engage in the practice of pharmacy unless ~~registered~~ licensed to practice pharmacy under this chapter. Physicians or other practitioners as defined in this chapter who are licensed under the laws of this state may dispense and administer prescription drugs to their patients in the practice of their respective professions if specifically authorized to do so by state law.

SECTION 12. AMENDMENT. Section 43-15-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-15. Qualifications of ~~registered~~ licensed pharmacist. Every applicant for ~~registration~~ license as a pharmacist in this state shall have the following qualifications:

1. Be at least eighteen years of age.
2. Be of good moral character.

3. Be a graduate of a school or college of pharmacy recognized by the board as an approved school.

Any applicant who is a graduate of a school or college of pharmacy located outside the United States, whose school or college of pharmacy has not been recognized by the board as an approved school but who is otherwise qualified to apply for ~~registration~~ licensure to practice pharmacy in this state, may be deemed to have satisfied the requirements of subsection 3 by verification to the board of applicant's academic record and applicant's graduation and by meeting such other requirements as the board may establish from time to time. The board may require such applicant to successfully pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education of such applicant with qualified graduates of a school or college recognized by the board as a prerequisite of taking the ~~registration~~ licensure examination provided for in section 43-15-19.

Before a ~~certificate~~ license will be granted by the North Dakota board of pharmacy, the applicant must have practical experience for a term to be determined by the board in accordance with the requirements of the national association of boards of pharmacy in a retail pharmacy under the supervision of a ~~registered~~ licensed pharmacist, which experience shall be predominantly work directly relating to selling drugs and poisons, compounding of pharmaceutical preparations and physicians' prescriptions, keeping records, and making reports required under the state and federal statutes. Any employment of the applicant prior to his completion of the first year of study in a college of pharmacy or its equivalent shall not be applied in computing the fulfillment of this requirement.

SECTION 13. AMENDMENT. Section 43-15-16 of the North Dakota Century Code is amended and reenacted as follows:

43-15-16. Exception to qualificational requirements. Any person qualified to take the examination for ~~registration~~ licensure as a pharmacist in this state under the law in effect prior to July 1, 1927, who failed to apply for the examination, upon due proof to the board that he was so qualified and that he is a bona fide resident of this state, may take the examination. Upon passing the examination in a manner satisfactory to the majority of the board, such person shall be given a ~~certificate~~ license as a ~~registered~~ licensed pharmacist.

SECTION 14. AMENDMENT. Section 43-15-18 of the North Dakota Century Code is amended and reenacted as follows:

43-15-18. ~~Registration~~ License of pharmacy intern. To register in this state a pharmacy intern must have completed one year in an approved college of pharmacy and must be employed by a ~~registered~~ licensed pharmacist. At the date of entering into his internship, he shall file with the secretary of the board the following certificates accompanied by a fee of five dollars:

1. A certificate stating he has entered into an internship and giving his age, name, residence, and educational qualifications.

2. A certificate from his employer stating that the applicant has been employed by him as a pharmacy intern, that to his knowledge the applicant possesses the required education and qualifications.

The secretary of the board shall file the certificates and ~~register~~ license the applicant as a pharmacy intern.

SECTION 15. AMENDMENT. Section 43-15-18.1 of the North Dakota Century Code is amended and reenacted as follows:

43-15-18.1. Conviction not bar to ~~registration~~ license - Exceptions. Conviction of an offense shall not disqualify a person from ~~registration~~ licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a pharmacist or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 16. AMENDMENT. Section 43-15-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-19. Examination for ~~registration~~ license. Except as otherwise provided in this chapter, every applicant for ~~registration~~ licensure as a pharmacist, before receiving a ~~certificate~~ license from the board, shall pass such an examination as to his education and professional qualifications as the board shall prescribe.

SECTION 17. AMENDMENT. Section 43-15-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-20. Fees for examination. Each applicant for ~~registration~~ licensure as a pharmacist in this state shall pay to the secretary of the board before examination a fee to be set by the board not to exceed three hundred dollars. If the applicant fails to pass a satisfactory examination, he may be reexamined at any regular meeting of the board, upon the payment of a further fee to be set by the board not to exceed three hundred dollars.

SECTION 18. AMENDMENT. Section 43-15-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-21. ~~Certificate~~ License - Issuance. The board shall cause to be issued to each pharmacist in this state whom it finds entitled thereto, a ~~certificate~~ license showing:

1. The date of issue.
2. The fact that the person to whom it was issued is a ~~registered~~ licensed pharmacist.
3. The residence of the person to whom the ~~certificate~~ license was issued.

The ~~certificate~~ license shall be signed by a majority of the members of the board.

SECTION 19. AMENDMENT. Section 43-15-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-22. ~~Registration~~ Licensing without examination. The board, without examination, may register and issue a ~~certificate~~ license as a pharmacist to any person of good moral character who presents to the board satisfactory evidence that before coming to this state he legally had been licensed as a pharmacist in another state or foreign country, in which the requirements for such license with respect to

qualifications are equivalent to the requirements of this state, but the board need not recognize or accept such license, certificate, or registration as evidence of the applicant's qualifications unless it is satisfied that the applicant is in fact qualified to be a pharmacist in this state. The board may deny recognition or acceptance of the license, certificate, or registration of any state or foreign country which does not accord similar recognition to licentiates of this state. A fee to be set by the board not to exceed three hundred dollars shall be paid prior to ~~registration~~ licensing without examination as provided for herein.

SECTION 20. AMENDMENT. Section 43-15-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-25. Term of ~~certificate~~ license - Renewal - Fee - Where displayed. The ~~certificate~~ license issued by the board to a pharmacist under the provisions of this chapter, and the registration thereof, shall entitle the holder to act in the capacity therein stated for one year unless duly canceled, suspended, or revoked. Every ~~registrant~~ licensee who desires to retain ~~his registration~~ a license, on or before the first day of March in each year, shall pay to the secretary of the board a renewal fee in an amount to be fixed by the board not to exceed two hundred dollars. Upon payment of the fee, a renewal ~~certificate~~ license shall be issued. The ~~certificate~~ license and renewal shall be displayed in a conspicuous place in the pharmacy and drugstore where the holder is employed. After a ~~registrant~~ licensee has held ~~certificates~~ licenses duly issued over a period of fifty consecutive years, the secretary of the board may issue the ~~registrant~~ licensee a lifetime ~~certificate~~ license which will entitle the ~~registrant~~ licensee to act in the capacity of pharmacist thereafter without further payment unless such ~~certificate~~ license is canceled, revoked, or suspended.

SECTION 21. AMENDMENT. Subsections 1 and 2 of section 43-15-25.1 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The legislative assembly makes the following findings and declarations:

   a. Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain professional competency and improve professional skills.

   b. To assure the continued competency of the pharmacist and to maintain uniform qualifications for ~~registration and~~ licensure in the profession for the protection of the health and welfare of its citizens, the legislative assembly of North Dakota deems it in the public interest to adopt a continuous professional education program.

2. Commencing March 1, 1987, no annual renewal of a ~~certificate of registration~~ license may be issued to a pharmacist until such pharmacist has satisfactorily completed an accredited program of continuing professional education, all of which may be home self-study, during the previous two years to help assure the pharmacist's continued competence to engage in the practice of pharmacy. The board from time to time shall determine the amount of continuing education to be required, not to exceed thirty hours in each biennium period. Upon request of the board, proof of compliance shall be furnished to the board.

SECTION 22. AMENDMENT. Section 43-15-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-26. Failure to renew ~~certificate~~ license - Renewal fee - Cancellation of ~~registration and certificate~~ license - Reinstatement. If a ~~registered~~ licensed pharmacist in this state fails to pay the fee for a renewal of ~~his certificate~~ a license within the time required, the secretary of the board shall mail ~~him~~ the pharmacist a notice, addressed to ~~his~~ the pharmacist's last known place of residence, notifying ~~him~~ the pharmacist of ~~his~~ failure to obtain a renewal ~~certificate~~ license. The delinquent ~~certificate holder~~ licenseholder, within sixty days after the notice is mailed, may procure a renewal ~~certificate~~ license upon the payment of a renewal fee to be set by the board not to exceed two hundred dollars. If the ~~certificate holder~~ licenseholder fails to have ~~his~~ ~~certificate~~ a license renewed within sixty days after the notice is mailed, ~~his~~ the original or renewal ~~certificate~~ license, as the case may be, shall become void and the registry thereof shall be canceled. The board, on application of the delinquent ~~certificate holder~~ licenseholder and upon the payment of all unpaid fees, may authorize the issuance ~~to him~~ of a new ~~certificate~~ license without examination, if it is satisfied that the applicant is a proper person to receive the same.

SECTION 23. AMENDMENT. Section 43-15-27 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-27. Change place of business - Record - Fee. Every ~~registered~~ licensed pharmacist, within thirty days after changing ~~his~~ a place of business as designated on the books of the board, shall notify the secretary of the board of ~~his~~ the new place of business and shall accompany the notice with a fee to be set by the board not to exceed twenty-five dollars. Upon receipt of the fee and the notice of change of place of business, the secretary shall make the necessary change in the register and issue a receipt for the fee to the person sending it.

SECTION 24. AMENDMENT. Subsections 1 and 3 of section 43-15-28.1 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. If the board has verified evidence that probable cause or grounds for discipline requires the suspension of a pharmacy permit or ~~certificate of registration~~ license of a pharmacist and where harm to the public is so imminent and critical that substantial harm could or would likely result if the permit or ~~certificate~~ license is not suspended prior to a hearing, the board may order a temporary suspension ex parte.

3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the permit or ~~certificate of registration~~ license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the pharmacy or pharmacist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.

SECTION 25. AMENDMENT. Section 43-15-29 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-29. False registration - Penalty. Any person who shall procure or attempt to procure ~~registration~~ license as a pharmacist, for ~~himself~~ that person or any other person under this chapter, by making or causing to be made any false

representations, or who falsely or fraudulently ~~shall represent himself to be registered~~ represents that the person is licensed, shall be guilty of a class A misdemeanor, and in addition to the penalty imposed by the court, shall, if ~~he is~~ a ~~registered~~ licensed pharmacist, have ~~his registration~~ the license canceled by the board.

SECTION 26. AMENDMENT. Section 43-15-30 of the North Dakota Century Code is amended and reenacted as follows:

43-15-30. ~~Registered~~ Licensed pharmacist member of North Dakota pharmaceutical association. ~~Registration~~ Licensure as a pharmacist by the board entitles the person so ~~registered~~ licensed to a one-year membership in the North Dakota pharmaceutical association.

SECTION 27. AMENDMENT. Section 43-15-31 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-15-31. ~~Physicians' prescriptions~~ Prescriptions to be filed and preserved. Every ~~registered~~ licensed pharmacist in the state shall file, or cause to be filed, any ~~physician's~~ prescription, or a copy thereof, which has been compounded or dispensed in ~~his~~ the pharmacist's pharmacy or drugstore. The prescription or a copy of the prescription must be preserved for at least five years after it has been filled. The pharmacist may furnish a copy of any prescription to the party presenting it on the request of such party only.

SECTION 28. AMENDMENT. Section 43-15-31.2 of the North Dakota Century Code is amended and reenacted as follows:

43-15-31.2. Prescription drug information required. With each ~~new~~ prescription dispensed, the ~~registered~~ licensed pharmacist or the ~~registered~~ licensed intern pharmacist, in addition to labeling the prescription in accordance with law, must explain to the patient or the patient's agent the directions for use and a warning of the potential harmful effect of combining any form of alcoholic beverage with the medication and any additional information, in writing if necessary, to assure the proper utilization of the medication or device prescribed. For those prescriptions delivered outside the confines of the pharmacy, the explanation shall be by telephone or in writing, provided that this shall not apply to those prescriptions for patients in hospitals or institutions where the medication is to be administered by a nurse or other individual licensed to administer medications, or to those prescriptions for patients who are to be discharged from a hospital or institution.

SECTION 29. AMENDMENT. Section 43-15-31.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **43-15-31.3. Oral transmission of refill prescriptions.** An oral reorder for a prescription drug may be accepted and dispensed by a pharmacist or ~~registered~~ licensed pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to transmit the oral refill prescription. Before authorizing the transmittal of the oral refill

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[2] NOTE: Section 43-15-31.3 was also amended by section 1 of House Bill No. 1344, chapter 424.

prescription, the practitioner shall place a written copy of the prescription in the patient's records. Only a ~~registered~~ licensed pharmacist or a ~~registered~~ licensed pharmacist intern may receive an oral refill prescription. An oral refill prescription received by an agent or clerical person employed by a pharmacy may not be dispensed. The licensing board of a practitioner shall notify the board of pharmacy and board of nursing in writing, on an annual basis or more frequent basis if necessary, of the specific nurse or nurses who are authorized by the practitioner to transmit oral refill prescriptions.

SECTION 30. AMENDMENT. Section 43-15-33 of the North Dakota Century Code is amended and reenacted as follows:

43-15-33. License to sell emergency medicines. Any person of good moral character over eighteen years of age, who conducts a retail business at a place more than five miles [8.05 kilometers] from a drugstore employing a ~~registered~~ licensed pharmacist, may procure from the board, upon application and payment to said board of a fee of three dollars annually, a license which shall permit such retailer to keep for sale, and to sell in original packages, the simple household remedies and such other emergency medicines and poisons as from time to time may be approved for such sale by the board. Such license shall be for a period of one year commencing on July first and ending on June thirtieth following the date of the application. It shall apply to the location for which it is issued and shall be posted in a conspicuous place at such location. Upon satisfactory proof to the board of any violation of any law of the state by the licensee in or upon the premises licensed, the board shall revoke the license. The board, from time to time, may add to or eliminate from the approved list of simple household remedies, emergency medicines, and poisons salable under the license. Notice of the alterations shall be given by publication in such manner as the board deems proper.

[3] **SECTION 31. AMENDMENT.** Subsections 4 and 5 of section 43-15-35 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The management of the pharmacy is under the personal charge of a pharmacist duly ~~registered~~ licensed under the laws of this state.

5. The applicant for such permit is qualified to conduct the pharmacy, and is a ~~registered~~ licensed pharmacist in good standing or is a partnership, each active member of which is a ~~registered~~ licensed pharmacist in good standing, or a corporation or association, the majority stock in which is owned by ~~registered~~ licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.

SECTION 32. AMENDMENT. Subsections 1 and 2 of section 43-15-42.1 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Upon the finding of the existence of grounds for discipline of any person holding, seeking, or renewing a ~~certificate of registration,~~ permit~~,~~ or license under this chapter, the board may impose one or more of the following penalties:

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[3] NOTE: Section 43-15-35 was also amended by section 88 of Senate Bill No. 2223, chapter 54.

a. Suspension of the offender's ~~certificate of registration,~~ permit~~,~~ or license for a term to be determined by the board.

b. Revocation of the offender's ~~certificate of registration,~~ permit~~,~~ or license.

c. Restriction of the offender's ~~certificate of registration,~~ permit~~,~~ or license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board.

d. Refusal to issue or renew offender's ~~certificate of registration,~~ permit~~,~~ or license.

e. Placement of the offender or the offender's ~~certificate of registration,~~ permit~~,~~ or license under suspension and supervision by the board for a period to be determined by the board.

f. Cancellation of the offender's ~~certificate of registration,~~ permit~~,~~ or license.

g. Reprimand.

h. Imposition of a fine not to exceed one thousand dollars for each offense involving diversion of controlled substances or a fine not to exceed five hundred dollars for any other offense, with the sanction that the ~~certificate of registration,~~ permit~~,~~ or license may be suspended until the fine is paid to the board.

2. Any person whose ~~certificate of registration,~~ permit~~,~~ or license to practice pharmacy in North Dakota has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such ~~certificate of registration,~~ permit~~,~~ or license. A petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 423

SENATE BILL NO. 2444
(Senator Thane)

EMERGENCY PHARMACY PRACTICE

AN ACT to create and enact a new subsection to section 43-15-01 of the North Dakota Century Code, relating to definitions under the pharmacy laws; and to amend and reenact subsection 16 of section 43-15-01 of the North Dakota Century Code, relating to the practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 16 of section 43-15-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, consulting, and educating where necessary or where regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; where appropriate and where regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; <u>emergency pharmacy practice;</u> and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

SECTION 2. A new subsection to section 43-15-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

<u>"Emergency pharmacy practice" means in the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two hour supply of the prescribed medication, provided that:</u>

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[1] NOTE: Subsection 16 of section 43-15-01 was also amended by section 1 of Senate Bill No. 2213, chapter 422.

a. The prescription is not for a controlled substance listed in Schedule II;

b. The pharmaceutical is essential to the maintenance of life or to the continuation of therapy;

c. In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

d. The pharmacist properly records the dispensing; and

e. The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after the one-time emergency refill dispensing.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 424

HOUSE BILL NO. 1344
(Representatives Svedjan, C. Carlson, Grumbo, Huether, D. Olsen, Stenehjem)

ORAL TRANSMISSION OF PRESCRIPTIONS

AN ACT to amend and reenact section 43-15-31.3 of the North Dakota Century Code, relating to the oral transmission of prescriptions to a pharmacist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-31.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **43-15-31.3. Oral transmission of ~~refill~~ prescriptions.** An oral ~~reorder for~~ transmission of a prescription drug may be accepted and dispensed by a pharmacist or registered pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the ~~oral refill~~ prescription. ~~Before authorizing the transmittal of the oral refill prescription, the~~ The practitioner shall ~~place a written copy of~~ document the ~~prescription~~ order for oral transmission in the patient's records. Only a registered pharmacist or a registered pharmacist intern may receive an ~~oral refill~~ orally transmitted prescription. ~~An oral refill prescription received by an agent or clerical person employed by a pharmacy may not be dispensed. The licensing board of a practitioner shall notify the board of pharmacy and board of nursing in writing, on an annual basis or more frequent basis if necessary, of the specific nurse or nurses who are authorized by the practitioner to transmit oral refill prescriptions.~~

Approved April 14, 1993
Filed April 15, 1993

[1] NOTE: Section 43-15-31.3 was also amended by section 29 of Senate Bill No. 2213, chapter 422.

CHAPTER 425

SENATE BILL NO. 2339
(Senators DeMers, Yockim)
(Representatives Bodine, Boucher, Cleary, A. Olson)

NURSE LOAN REPAYMENT PROGRAM

AN ACT to establish a state-community matching loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives; to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to practicing medicine without a license; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Use of certain words or initials prohibited. The terms "physician assistant" and "certified physician assistant" and the initials "PA-C" may only be used to identify a person who has been issued a certificate of qualification by the board of medical examiners. A person who uses those terms or initials as identification without having received a certificate of qualification is engaging in the practice of medicine without a license.

SECTION 2. State-community matching loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives.

1. The North Dakota state-community matching loan repayment program for nurse practitioners, physician assistants, and certified nurse midwives is established as provided by sections 2 through 10 of this Act.

2. The purpose of the program is to increase the number of nurse practitioners, physician assistants, and certified nurse midwives practicing in North Dakota communities with defined health professional need.

3. Under the program, loan repayments may be made to a recipient for educational expenses incurred while the recipient was attending an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives.

4. Loan repayment funds consist of a fifty percent match from the state and a fifty percent match from the selected community.

5. Each recipient is limited to a ten thousand dollar maximum loan repayment to be paid over two years.

6. The state health council shall select up to five recipients in five communities each year as participants in the program.

SECTION 3. Powers of state health council. The state health council may:

1. Determine eligibility and qualifications of an applicant to receive loan repayment according to section 4 of this Act.
2. Identify communities with health professional need and establish a priority ranking for program participation of the selected communities.
3. Determine the amount of the loan repayment an applicant may receive within the parameters of sections 2 through 10 of this Act. This determination must include an investigation of the outstanding education loans incurred by the applicant.
4. Determine the condition of loan repayment to an applicant.
5. Enter into a two-year nonrenewable loan repayment program contract with the applicant and the selected community to provide repayment of education loans in exchange for the nurse practitioner, physician assistant, or certified nurse midwife agreeing to practice in the selected community.
6. Receive and use funds appropriated for the program.
7. Receive and use funds paid by the selected communities for repayment of education loans for nurse practitioners, physician assistants, or certified nurse midwives who apply and qualify for assistance under the program.
8. Enforce any contract under the program.
9. Cancel a contract for reasonable cause.
10. Participate in federal programs supporting repayment of loans to eligible participants, and agree to the conditions of the federal programs.
11. Create a loan repayment application packet.
12. Accept property from any entity.
13. Work with the university of North Dakota's center for rural health in implementing sections 2 through 10 of this Act.

SECTION 4. Nurse practitioner, physician assistant, and certified nurse midwife selection criteria - Eligibility for loan repayment.

1. The state health council shall establish criteria to apply to an applicant for a loan repayment. The criteria must include:
   a. The extent to which an applicant's training is needed in a selected community as determined by the state health council.
   b. The applicant's commitment to serve in a community with defined health professional need.
   c. The applicant's achieving a match with a selected community.

d. The availability of the applicant for service, with the highest consideration being given to an applicant who is available for service at the earliest date.

e. The applicant's professional competence and conduct.

f. The willingness of the applicant's employing or supervising physician to accept medicare and medicaid assignment.

2. The state health council shall give priority for program participation to an applicant who:

a. Is enrolled in or has graduated from an accredited program located in this state; or

b. Is a North Dakota resident who is enrolled in or has graduated from an accredited program in another state or Canada.

3. A nurse practitioner, physician assistant, or certified nurse midwife who receives loan repayment under sections 2 through 10 of this Act:

a. Must be a graduate of an accredited program, located in the United States or Canada, for the preparation of nurse practitioners, physician assistants, or certified nurse midwives;

b. Must be enrolled in or have graduated from an accredited training program for nurse practitioners, physician assistants, or certified nurse midwives prior to or within one year after submitting an application to participate in the loan repayment program and may not have practiced full time as a nurse practitioner, physician assistant, or certified nurse midwife in this state within three years before the date of the application;

c. Must be licensed or registered to practice as a nurse practitioner, physician assistant, or certified nurse midwife in this state;

d. Shall submit an application to participate in the loan repayment program; and

e. Must have entered into an agreement with a selected community to provide full time services for a minimum of two years at the selected community if the applicant receives a loan repayment program contract.

SECTION 5. Community selection criteria.

1. The state health council shall apply at least the following criteria for selecting a community with defined health professional need:

a. The ratio of physicians and mid-level health care practitioners to population in the community.

b. Access by the residents of the community to health care within the community and in the surrounding area.

c. Assessment of the expected number of clinic visits within the community per year.

d. The mix of health care providers within the community.

e. Indications of community support for mid-level health care practitioner utilization within the community.

2. The state health council shall give priority for participation to a community that:

a. Demonstrates a need for primary health care; or

b. Has a population of not more than fifteen thousand persons.

3. In selecting a community with health professional need, the state health council may consult public and private associations and organizations and make an onsite visit to a community for assessment.

SECTION 6. Eligible loans. The state health council may provide for loan repayment to a recipient of any education loan. The council may not provide for repayment of any loan that is in default at the time of the application. The amount of repayment must be related to the applicant's outstanding education loans. No applicant may receive repayment in an amount greater than the total outstanding balance on the applicant's education loans together with applicable interest. Loan payments may not be used to satisfy other service obligations under similar programs.

SECTION 7. Breach of loan repayment contract. A recipient of loan repayment under sections 2 through 10 of this Act who breaches the loan repayment program contract by failing to begin or complete the obligated service is liable for twice the total uncredited amount of all loan repayment that was contracted on a prorated monthly basis. The recipient who breached the loan repayment program contract shall pay the health council, within one year from the date of the breach of the loan repayment program contract, damages the state is entitled to recover. Damages recoverable for breach of contract include all interest, costs, and expenses incurred in collection, including attorneys' fees. Damages collected under this section must be prorated among the state and the involved community. The state share must be deposited in the general fund. For compelling reasons, the health council may agree to and accept a lesser measure of damages for breach of a loan repayment program contract.

SECTION 8. Release from contract obligation. An applicant is released from the applicant's obligated service, without penalty, if the obligated service has been completed; the applicant is unable to complete the term of the contract because of permanent physical disability; the applicant dies; or the applicant proves extreme hardship or other good cause, to be determined by the council. A decision by the health council not to release an applicant from the applicant's obligated service without penalty is reviewable by the district court.

SECTION 9. Term of obligated service. The length of the term of obligated service of a recipient of a loan repayment under sections 2 through 10 of this Act is two years.

SECTION 10. Payment. No payment may be made under sections 2 through 10 of this Act until the nurse practitioner, physician assistant, or certified nurse midwife has practiced at least three months on a full-time basis in a selected community with health professional need. Any arrangement made by the state health

council for loan repayment in accordance with sections 2 through 10 of this Act must provide that any loan repayment for a year of obligated service be made no later than the end of the fiscal year in which the nurse practitioner, physician assistant, or certified nurse midwife completes the year of obligated service.

SECTION 11. APPROPRIATION. The funds provided in this section, or so much of those funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state health council for the purpose of establishing and operating the North Dakota state community matching loan repayment program for nurse practitioners, physician assistants, or certified nurse midwives for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Startup and administrative costs	$ 5,000
Loan repayment funds	37,500
Total general fund appropriation	$42,500

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 426

HOUSE BILL NO. 1331
(Representatives Svedjan, Clayburgh, Grumbo, Huether, Monson, Stenehjem)

PHYSICIAN DISCIPLINARY PROCEEDINGS

AN ACT to create and enact two new sections to chapter 43-17, two new subsections to section 43-17-30.1, seven new subsections to section 43-17-31, and a new section to chapter 43-17.1 of the North Dakota Century Code, relating to the board of medical examiners, state defense of board members, disciplinary action against physicians, and complaints to the commission on medical competency; and to amend and reenact sections 43-17-03, 43-17-32.1, and 43-17.1-06 of the North Dakota Century Code, relating to the board of medical examiners, the suspension of a physician's license, and the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-03. State board of medical examiners - How appointed - Qualifications.

1. The governor shall appoint a state board of medical examiners consisting of ten members, ~~nine~~ eight of whom ~~shall be~~ are M.D.'s ~~and~~, one of whom ~~shall be~~ is a D.O., and one of whom is designated as a public member. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.

2. ~~each of whom shall have the following qualification~~ Each physician member must:

~~1.~~ a. Be a practicing physician of integrity and ability.

~~2.~~ b. Be a resident of and duly licensed to practice medicine in this state.

~~3.~~ c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.

~~4.~~ d. Have been engaged in the active practice of ~~his~~ the physician's profession within this state for a period of at least five years.

3. The public member of the board must:

a. Be a resident of this state.

b. Be at least twenty-one years of age.

c. Not be affiliated with any group or profession that provides or regulates health care in any form.

4. A person appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 2. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Powers of the board of medical examiners. In addition to any other powers, the board may:

1. Employ or contract with one or more organizations or agencies known to provide acceptable examinations for the preparation and scoring of required examinations relating to physician licensure, and employ or contract with one or more organizations or agencies known to provide acceptable examination services for the administration of the required examination.

2. Prescribe the time, place, method, manner, scope, and subject of examination.

3. Impose sanctions, deny licensure, levy fines, or seek appropriate civil or criminal penalties against anyone who violates or attempts to violate examination security, anyone who obtains or attempts to obtain licensure by fraud or deception, and anyone who knowingly assists in that type of activity.

4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board or to the commission on medical competency.

5. Require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.

6. Establish a mechanism for dealing with a licensee who abuses or is dependent upon or addicted to alcohol or other addictive chemical substances, to enter an agreement, at its discretion, with a professional organization whose relevant procedures and techniques it has evaluated and approved for the organization's cooperation or participation.

7. Issue a cease and desist order, obtain a court order, or an injunction to halt unlicensed practice, a violation of this chapter, or a violation of the rules of the board.

8. Issue a conditional, restricted, or otherwise circumscribed license as it determines necessary.

SECTION 3. A new section to chaper 43-17 of the North Dakota Century Code is created and enacted as follows:

Conflict of interest. A member of the board, acting in that capacity or as a member of any committee of the board, may not participate in the making of any

decision or the taking of any action affecting that member's personal, professional, or pecuniary interest, or that of a known relative or business or professional associate.

SECTION 4. Two new subsections to section 43-17-30.1 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

Require the licensee to provide free public or charitable service for a defined period.

Impose fines, not to exceed five thousand dollars for any single disciplinary action, in a case of failure to comply with statutory reporting requirements, or a violation of examination security.

SECTION 5. Seven new subsections to section 43-17-31 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.

The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

The violation of any state or federal statute or regulation relating to controlled substances.

The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.

The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

The failure to properly monitor a physician assistant or an emergency medical technician.

The failure to furnish the board or the commission on medical competency, their investigators, or representatives, information legally requested by the board or the commission.

SECTION 6. AMENDMENT. Section 43-17-32.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. ~~Where~~ When the board has verified evidence that probable cause requires the suspension of a physician's license ~~and where harm to the public is so imminent and critical that substantial harm would likely result if the physician's license is not suspended prior to a hearing~~ to reasonably protect the public from imminent or critical harm, the board may order a temporary suspension ex parte.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.

3. The board ~~must~~ shall set the date of a full hearing for suspension or revocation of the physician's license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.

4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether ~~probable cause~~ the board acted reasonably ~~requires the temporary suspension to adequately protect the public interest~~ or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 7. A new section to chapter 43-17.1 of the North Dakota Century Code is created and enacted as follows:

Reports to commission on medical competency - When required. A physician, the state medical association and its components, a health care institution in the state, a state agency, a law enforcement agency in the state, or a court in the state having actual knowledge that a licensed physician may be medically incompetent, guilty of unprofessional conduct, or mentally or physically unable to safely engage in the practice of medicine shall promptly report that information to the commission. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the commission if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee, or on its own motion, the commission may investigate any evidence that appears to show a licensee is or may be medically incompetent, guilty of unprofessional conduct, or mentally or physically incapable of the proper practice of medicine. Any person required to report under this section who makes a report in good faith may not be subject to criminal prosecution or civil liability for making the report. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment.

SECTION 8. AMENDMENT. Section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-06. Commission powers. The commission may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician under investigation. The confidentiality of the records by any other statute or law does not affect the validity of the commission's subpoena nor the admissibility of the records and board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under section 23-01-02.1 are not subject to this subsection.

2. Hold preliminary hearings.

3. Require any physician under investigation to submit to a physical ~~or~~, psychiatric, or competency examination, or chemical dependency evaluation.

4. Appoint special masters to conduct preliminary hearings.

5. Employ independent investigators when necessary.

6. Hold confidential conferences with any complainant or any physician with respect to any complaint.

7. File a formal complaint against any licensed physician with the state board of medical examiners.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 427

SENATE BILL NO. 2445
(Senator Thane)

BOARD OF MEDICAL EXAMINERS TERMS

AN ACT to amend and reenact section 43-17-04 of the North Dakota Century Code, relating to the term of office of members of the board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17-04. Term of office. The term of office of each member of the board shall be ~~three~~ four years and until his successor is appointed and qualified. The terms shall be so arranged that no more than four terms shall expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment but in case of a vacancy before the expiration of a term, the appointment shall be for the residue of the term only. No member of the board shall serve thereon for more than two successive terms.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 428

SENATE BILL NO. 2477
(Senators Andrist, Jerome, O'Connell, Tallackson)
(Representative Skarphol)

MEDICAL LICENSE EDUCATION QUALIFICATIONS

AN ACT to amend and reenact section 43-17-18 of the North Dakota Century Code, relating to qualifications for a license to practice medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-18. Qualifications of applicant for license. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

1. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;

2. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;

3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. However, the board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program. If an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of

postgraduate training, then the applicant may be deemed eligible for licensure. Three years of postgraduate training in the United Kingdom must be considered to be equivalent to one year of postgraduate training in the United States or Canada. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements;

4. Successful completion of a medical licensure examination satisfactory to the board;

5. Physical, mental, and professional capability for the practice of medicine in a manner acceptable by the board; and

6. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act which would constitute grounds for disciplinary action under this chapter; the board, in its discretion, may modify this restriction for cause.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 429

HOUSE BILL NO. 1068
(Representative R. Berg)

HOSPITAL EMPLOYMENT OF PHYSICIANS

AN ACT to amend and reenact section 43-17-42 of the North Dakota Century Code, relating to employment of physicians by hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-42 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-42. Employment of physicians by ~~nonprofit corporations doing business as~~ hospitals. Notwithstanding any other provision of law, ~~it is permissible for~~ a hospital ~~incorporated as a nonprofit corporation under chapter 10-24 to~~ licensed under chapter 23-16 may employ directly or indirectly ~~employ~~ a physician provided that the employment relationship between the physician and hospital is evidenced by a written contract containing language to the effect that the hospital's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the hospital. Under this section a hospital may not be deemed to be engaged in the practice of medicine.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 430

SENATE BILL NO. 2082
(Industry, Business and Labor Committee)
(At the request of the State Board of Plumbing)

PLUMBER LICENSING

AN ACT to create and enact two new sections to chapter 43-18 and a new subsection to section 43-18-18 of the North Dakota Century Code, relating to reporting and inspection of plumbing work and grounds for revocation of license; and to amend and reenact sections 43-18-08, 43-18-10, 43-18-11, and 43-18-21 of the North Dakota Century Code, relating to supervision and inspection of plumbing installations, locations where plumbing licenses are required, number of apprentices working under supervision of a plumber, and apprenticeship fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-18-08 of the North Dakota Century Code is amended and reenacted as follows:

43-18-08. Duties of board. The board shall:

1. ~~Supervise and inspect the plumbing, drainage, sewerage, and plumbing ventilation in all public buildings within this state.~~

~~2.~~ Enforce the provisions of this chapter.

~~3.~~ 2. Prescribe rules and regulations not inconsistent with the provisions of this chapter for the examination, regulation, and licensing of plumbers, either as master plumbers, journeyman plumbers, plumber's apprentices, or any of such classifications.

SECTION 2. AMENDMENT. Section 43-18-10 of the North Dakota Century Code is amended and reenacted as follows:

[1] **43-18-10. Firm engaged in installing plumbing to employ master plumber - Exceptions.** No person, firm, or corporation shall engage in the business of installing plumbing and shall not install plumbing in connection with the dealing in and selling of plumbing materials and supplies in any ~~incorporated city~~ location of this state having a public system of waterworks or sewerage, unless at all times a registered and licensed master plumber, who is responsible for the proper installation thereof, is in charge of such work. ~~There shall not be more than five plumber's apprentices under the immediate and personal supervision of either a master plumber or journeyman plumber employed on any installation, alteration, or repair project.~~ In cities of less than one thousand population and in all rural

[1] NOTE: Section 43-18-10 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

areas, a licensed journeyman plumber may engage in the business of installing plumbing.

SECTION 3. AMENDMENT. Section 43-18-11 of the North Dakota Century Code is amended and reenacted as follows:

[2] **43-18-11. License required - Exception for homeowner and full-time employee.** No person, firm, or corporation shall engage in the business of a master plumber, journeyman plumber, or plumber's apprentice in any ~~incorporated city~~ location of this state having a public system of waterworks or sewerage unless registered and licensed to do so by the board. Anyone not so licensed may do plumbing work which complies with the provisions of the minimum standards prescribed by the board on premises or that part of premises owned and actually occupied by ~~him~~ the person as ~~his~~ a residence, or may do plumbing repair on premises where ~~he~~ the person is employed in full-time maintenance work, unless otherwise forbidden to do so by a local ordinance. Public water system employees may install and maintain service lines and water meters on premises served by the water system.

SECTION 4. A new section to chapter 43-18 of the North Dakota Century Code is created and enacted as follows:

Report of work - Exception. A person shall report doing plumbing work subject to inspection under section 5 of this Act to the board upon forms furnished by the board. This section does not apply to plumbing installations in buildings that are not connected to a public system of waterworks or sewerage or in political subdivisions where inspection is required by local ordinance.

SECTION 5. A new section to chapter 43-18 of the North Dakota Century Code is created and enacted as follows:

Inspection of installation - Exception. The board has jurisdiction over and shall make provision for inspection of plumbing installations or alterations to public buildings and installations in newly constructed dwelling units, except as provided in this section. Political subdivisions may provide for inspection of plumbing work done within their jurisdictional limits. The board may charge the person responsible for the installation a reasonable fee not to exceed the cost of inspection. No inspection is required for any repair work or plumbing fixture replacement which requires only minor alteration, or to buildings that are not connected to a public system of waterworks or sewerage, and does not apply to maintenance work conducted by regularly employed maintenance personnel on the business premises of their employer.

SECTION 6. A new subsection to section 43-18-18 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Failure to report work as required under section 4 of this Act.

SECTION 7. AMENDMENT. Section 43-18-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[2] NOTE: Section 43-18-11 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

43-18-21. Apprenticeship.

~~1.~~ Every apprentice plumber shall within thirty days after beginning ~~his~~ apprenticeship register with the state plumbing board on a registration application form which will be supplied by the board, showing date of beginning apprenticeship, age, schooling, previous experience, employer, and such other information as the board may require, except that a person who is working in a school-work program need not register.

~~2. Each applicant for registration as an apprentice must have reached the age of eighteen years. The board may accept registration of persons beginning a course in plumbing at an accredited school and from any persons who furnish satisfactory evidence to the board that they were actually employed as an apprentice plumber prior to July 1, 1975.~~

~~3. An apprentice shall serve a term of seven thousand six hundred hours. When the applicant furnishes proof of previous practical experience in the trade, or is a graduate of a course in plumbing in an accredited school, the board may grant him hourly credit toward his term of apprenticeship.~~

~~4. A master plumber employing a registered apprentice shall report to the board any changes made in relation to continued employment of such apprentice. It shall be the employer's duty and responsibility not to permit an apprentice to perform work unless he is under the direct supervision and in the immediate presence of either a master or journeyman plumber. Between five thousand seven hundred and seven thousand six hundred hours of apprenticeship training a registered apprentice, employed by a master plumber, may work by himself, or in cities of one thousand population or less and in all rural areas, such a registered apprentice may work in his own employ.~~

A registration certificate issued under the provisions of this section shall be valid for only one year and shall expire on the thirty-first day of December of the year in which it was issued. The certificate shall be renewed by the board upon application made within thirty days after the expiration thereof and on payment of the sum set by the board, but not to exceed twenty dollars for the first year, thirty dollars for the second year, forty dollars for the third year, and fifty dollars for the fourth year of apprenticeship. The fee after a four-year term of apprenticeship is the same as the fee for a journeyman plumber. This certificate of registration shall be the license required to be employed as a plumber's apprentice in this state.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 431

HOUSE BILL NO. 1218
(Representatives Keiser, Cleary)

DENTISTRY AND DENTAL HYGIENISTS

AN ACT to amend and reenact sections 43-20-02, 43-20-03, 43-20-05, 43-20-07, 43-20-12, 43-28-15, and 43-28-18 of the North Dakota Century Code, relating to the licensure of dental hygienists and to the practice of dentistry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-02. Dental hygienists - Qualifications - Examinations - Registration and license. Any person who is of good moral character, who is not already a licensed dental hygienist of this state, ~~being~~ who is a graduate of an accredited high school or its equivalent, and who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, upon applying for a license and ~~upon the payment of~~ paying an amount determined by the state board of dental examiners, may be examined by the ~~North Dakota state~~ board ~~of dental examiners~~, on the subjects considered essential by it for a dental hygienist. The examinations must be conducted by the board ~~of dental examiners~~ or by a designee of the board, or by a regional dental testing service in which the board participates, or by other national or regional dental testing services that the board recognizes. If the applicant, in the opinion of the board, successfully passes the examination, the applicant ~~must~~ may be registered and licensed as a dental hygienist. Applicants who fail to pass a satisfactory initial examination may be reexamined upon payment of the fee determined by the board for each subsequent examination. An applicant may not be allowed to take more than three examinations. Applicants for examination shall submit their credentials to the board at least thirty days before the examination date~~, which~~. The examination date must correspond to the date of examination for applicants for a license to practice dentistry in this state.

The ~~North Dakota~~ state board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the ~~North Dakota~~ board ~~of dental examiners~~ in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by. ~~The term dental hygiene and the practice thereof as~~ As used in this chapter ~~shall mean~~, "dental hygiene" means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth~~; provided, however, that~~ if such acts ~~must be~~ are performed under the

~~direction and control~~ direct or modified general supervision of a licensed dentist. ~~Persons practicing dental hygiene, other than dentists, shall~~ Only a person licensed as a dental hygienist may be referred to as a dental ~~hygienists~~ hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined ~~from time to time~~ by the board of dental examiners by appropriate rules ~~and regulations~~.

SECTION 3. AMENDMENT. Section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

43-20-05. Licenses - Suspension, revocation, refusal to renew, and reinstatements. The board of dental examiners may suspend or revoke, with power to reinstate, or refuse to renew a dental hygienist's license, upon any one or more of the following grounds:

1. Gross immorality or unprofessional conduct, which includes knowingly failing to comply with commonly accepted national infection control guidelines and standards.
2. Failure, neglect, or refusal to renew a license annually.
3. Nonobservance or violation of ~~any provision of~~ this chapter, or of any board rule ~~or regulation made hereunder~~ adopted under this chapter.
4. Gross inefficiency in the practice of dental hygiene~~; and said~~. The board ~~shall also have the power to and~~ may suspend or revoke, with power to reinstate, the license of any licensed dentist who ~~shall permit~~ permits any dental hygienist, operating under ~~his~~ the dentist's supervision, to perform any operation other than that permitted under ~~the provisions of~~ this chapter, or who ~~shall~~ knowingly ~~permit~~ permits any person who is not a licensed dental hygienist to perform any operations or services as such under ~~his~~ that dentist's supervision.

The procedure to be followed in the case of ~~such~~ a suspension, revocation, or ~~reinstatements shall~~ reinstatement must be the same as that prescribed by law in the case of suspension, revocation, or reinstatement of a licensed dentist.

SECTION 4. AMENDMENT. Section 43-20-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-07. ~~Dental hygienists from other states~~ Licensure by credential review. Any dental hygienist who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, who has been duly licensed for at least three years to practice dental hygiene in another state, ~~and~~ who is of good moral character and desirous of removing to this state, and who deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and a letter from the secretary of the state dental association, or the secretary of the state dental hygienists association or organization, of that state, certifying that the dental hygienist is of good moral character and professional attainments, may upon the payment of the fee determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the board deems necessary and proper, be granted a license to practice in this state. The board may~~, however,~~

dispense with examining an applicant if the state in which the applicant was previously licensed has a reciprocal agreement with this state.

SECTION 5. AMENDMENT. Section 43-20-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-12. Dental ~~hygienists - Auxiliary personnel - Distinction~~ hygienist - Dental assistant - Scope of permitted practice.

1. A ~~legally~~ licensed ~~and registered~~ dentist may delegate to a competent dental ~~auxiliary personnel~~ hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures ~~which~~ that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance ~~which~~ that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards and for passive posttreatment orthodontic retainers that do not replace missing teeth.

2. Except as provided in this subsection, dental ~~auxiliary personnel~~ hygienists may perform delegated procedures only under direct or modified general supervision of a dentist licensed in this state. The board of dental examiners may, where the board finds it appropriate, authorize the performance of delegated procedures under indirect or general supervision in hospitals, long-term care facilities, and state institutions upon application by a dentist licensed in this state. Any authority granted under this subsection is valid for one year, and upon application by a licensed dentist for renewal of the authority, must be reviewed in full by the board prior to the granting of renewal of the authority.

3. A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners.

SECTION 6. AMENDMENT. Section 43-28-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-15. ~~License and certificate - When issued to practitioners of another state~~ Licensure by credential review. The board may issue a license and certificate of registration to practice dentistry in this state to any person who wishes to practice dentistry in North Dakota upon a practical examination, if the person:

1. Has been licensed for at least five years to practice dentistry in another state where the requirements are equivalent to those of this state, and where like provisions are accorded to holders of certificates of registration issued in this state.

2. Is a reputable dentist of good moral character.

3. Pays to the board the fee determined by the board.

4. Delivers to the board a certificate from the examining or licensing board of every state in which the person is practicing or is licensed to practice, certifying that the person is a licensed and registered dentist in that state, and is of good moral character.

5. Demonstrates the person's ability to the satisfaction of the board.

The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.

SECTION 7. AMENDMENT. Section 43-28-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for revocation or suspension of license and certificate. The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional or immoral conduct.

2. Been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.

4. Been guilty of habitual intemperance or addicted to the use of drugs.

5. Employed or permitted unlicensed persons to practice dentistry in the office under the dentist's control.

6. Become grossly negligent in the practice of the profession.

7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.

8. Willfully betrayed confidential relations.

9. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners. However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of the association.

10. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.

11. Used any advertising of any character tending to mislead and deceive the public.

12. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those

deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.

13. Prescribed medications for reasons or conditions outside the scope of dental practice.

14. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.

15. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.

16. Willfully engaged in fraudulent submission of insurance claims.

17. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.

18. Made any false representations that the person is the holder of a license or certificate of registration to practice dentistry.

19. Made any false claims that the person is a graduate of a dental college or the holder of any diploma or degree from a dental college.

20. Failed to comply with commonly accepted national infection control guidelines and standards.

21. Violated ~~any of the provisions of~~ this chapter.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 432

HOUSE BILL NO. 1489
(Representatives A. Carlson, Porter, Rennerfeldt)

REAL ESTATE BROKER EDUCATION

AN ACT to amend and reenact subsection 4 of section 43-23-08 of the North Dakota Century Code, relating to education standards for real estate brokers and salespersons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-23-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~Beginning July 1, 1992, each~~ Each applicant for a salesperson's license must have successfully completed at least thirty classroom hours in a course of study approved by the commission, and each applicant for a broker's license must have successfully completed an additional sixty classroom hours in a course of study approved by the commission. Applicants for a salesperson's license may take the licensing examination prior to the fulfillment of the educational requirement, however, no license can be issued to an applicant unless satisfactory evidence of completion of this requirement is furnished to the commission. Applicants for a broker's license must have satisfactorily fulfilled the educational requirement prior to taking the broker's licensing examination. As used throughout this section, the term "classroom hours" means the actual time during such course of study that the class is actually in session. The requirements of this subsection do not apply to license renewals under section 43-23-08.2.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 433

SENATE BILL NO. 2073
(Industry, Business and Labor Committee)
(At the request of the North Dakota Real Estate Commission)

REAL ESTATE LICENSE EXAMINATION FEES

AN ACT to amend and reenact subsection 8 of section 43-23-13 of the North Dakota Century Code, relating to examination fees for applicants for real estate licensure; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 8 of section 43-23-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. For each examination given to an applicant, before a license is issued, a fee ~~of twenty dollars~~ in an amount equal to the actual costs of the examination and its administration.

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

Approved March 18, 1993
Filed March 18, 1993

[1] NOTE: Section 43-23-13 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 434

HOUSE BILL NO. 1397
(Representatives Cleary, A. Carlson)
(Senators Nalewaja, Tallackson)

REAL ESTATE TRUST ACCOUNT

AN ACT to amend and reenact sections 43-23.4-02, 43-23.4-05, and subsection 3 of section 43-23.4-06 of the North Dakota Century Code, relating to interest-bearing real estate broker's trust accounts and an exemption for certain accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.4-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23.4-02. Powers and duties of the committee.

1. The real estate trust account committee shall implement and administer an interest on broker trust account program.

2. The committee is the sole recipient of the interest or dividends paid ~~to the North Dakota association of realtors~~ from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds. ~~All funds received from the interest or dividends on real estate trust accounts and the income earned from investment of the funds must be maintained in accounts separate from other funds held by the association.~~

3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:

   a. Providing housing and shelter to the homeless and poor.

   b. Providing public education relating to needs of housing for the poor.

   c. Improving available safe and decent housing.

4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.

5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.

6. Within one hundred eighty days after July 1, 1991, the ~~association~~ committee shall adopt rules establishing guidelines and procedures for the operation of an interest on real estate trust account program, including:

a. Guidelines for identifying eligible applicants.

b. Procedures for submitting grant applications.

c. Guidelines for awarding grant applications.

d. Procedures for accounting for the expenditure of grant funds by the recipient.

Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.

7. Immediately after July 1, 1991, the real estate trust account committee shall take any action necessary to obtain~~:~~

~~a. A private letter revenue ruling from the internal revenue service, holding that the interest earned on funds deposited in a real estate trust account and paid to the committee are not includable in the gross income of either the client or third person who owns the funds, or of the broker who deposited the funds, and that neither the depository institution nor the broker is required to report the payment of the interest on behalf of the client or third person.~~

~~b.~~ ~~Permission~~ permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation in connection with a representation or transaction.

8. The real estate trust account committee shall adopt rules establishing guidelines and procedures that provide for an exemption from interest-bearing trust accounts requirements in cases where the cost of maintaining an interest-bearing trust account exceeds any potential interest earnings.

SECTION 2. AMENDMENT. Section 43-23.4-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23.4-05. Disposition of funds upon dissolution. ~~If the real estate trust account committee is discontinued, any funds under control of the committee must be transferred to its successor entity qualifying under the Internal Revenue Code, if any, for distribution for the purposes specified under section 43-23.4-02 or, if there is no successor, to the general fund of the state real estate commission's research, recovery, and education fund.~~ Upon dissolution of the organization, assets must be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or to such entities organized and operated exclusively for charitable, educational, religious, or scientific purposes under section 501(c)(3) of the Internal Revenue Code. Any assets not so disposed of must be disposed of by a court of competent juridiction of the county in which the principal office of the organization is located exclusively for charitable, educational, religious, or scientific purposes.

SECTION 3. AMENDMENT. Subsection 3 of section 43-23.4-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The broker shall direct the depository institution to:

a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;

b. Transmit with each remittance to the ~~association~~ committee a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and

c. Transmit a copy of the statement to the depositing broker.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 435

HOUSE BILL NO. 1296
(Representatives Svedjan, Byerly)
(Senator Tallackson)

PHYSICAL THERAPIST REGULATION

AN ACT to amend and reenact sections 43-26-01, 43-26-06, 43-26-09, and 43-26-11 of the North Dakota Century Code, relating to definitions, fees, and continuing education for physical therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Physical therapy" means the art and science of a health speciality concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health speciality, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:

   a. Performing and interpreting tests and measurements as an aid to physical therapy treatment.

   b. Planning initial and subsequent treatment programs, on the basis of test findings.

   c. Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability.

2. "Physical therapist" means a ~~person who applies physical therapy as defined in~~ physical therapist registered under this chapter.

3. "Physical therapist assistant" means a ~~person~~ physical therapist assistant registered under this chapter who assists, under ~~the onsite~~ direction of a registered physical therapist, in the practice of physical therapy and who performs such delegated procedures commensurate with the assistant's education and training. ~~No more than two physical therapist assistants may be supervised by one physical therapist.~~

4. "Supportive personnel" means persons other than registered physical therapists who function in a physical therapy setting and assist with physical therapy care.

SECTION 2. AMENDMENT. Section 43-26-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-06. Applicants - Qualifications - Examinations. It is the duty of the committee to pass upon the qualifications of all applicants for physical therapy and physical therapist assistant examination and registration, provide for and conduct all examinations, determine the applicants who successfully pass the examination, and duly register such persons. To be registered as a physical therapist or a physical therapist assistant, a person must:

1. Be at least eighteen years of age.
2. Be of good moral character.
3. Have been graduated by a school of physical therapy or a program of physical therapist assistant training approved by the committee.

Examinations must embrace subjects to test an applicant's knowledge of the basic and clinical sciences as they relate to physical therapy, and physical therapy theory and procedures, and such other subjects as the committee may determine to be necessary. When applying to take the registration examination, the applicant shall pay the committee a fee fixed by committee regulation and not exceeding two hundred dollars which may not be returned if the application is denied. The committee may determine the fee without complying with chapter 28-32.

SECTION 3. AMENDMENT. Section 43-26-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-09. Renewals - Continued currency - Fees. In January of each year every physical therapist or physical therapist assistant shall apply to the committee for an extension of his or her registration, and pay a fee determined by the committee ~~regulation and~~ which may not ~~exceeding~~ exceed one hundred dollars. The committee may determine the fee without complying with chapter 28-32. Registration that is not annually renewed on or before January thirty-first lapses on that date. The committee, in its discretion, may reinstate a lapsed registration upon payment of the full renewal fee as provided in this section and may, in its discretion, require a late renewal fee of fifty dollars.

The committee may ~~establish~~ adopt rules ~~and regulations~~ to require some evidence of continued currency for registration or reregistration as a physical therapist or a physical therapist assistant.

SECTION 4. AMENDMENT. Section 43-26-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-26-11. Refusal, suspension, or revocation of certificate. The committee may refuse to register any physical therapist or physical therapist assistant, or may suspend or revoke the registration of any physical therapist or physical therapist assistant, for any of the following grounds:

1. Use of controlled substances, drugs, or liquor to an extent that affects professional competency.

2. A determination by the committee that a conviction of the holder of an offense has a direct bearing on the holder's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1.

3. Procuring, aiding, or abetting an illegal abortion.

4. Obtaining or attempting to obtain registration by fraud or deception.

5. A finding by a court of competent jurisdiction that the registrant is a mentally ill person and has not thereafter been restored to legal capacity.

6. Conduct unbecoming a person registered as a physical therapist or physical therapist assistant, or detrimental to the best interests of the public.

7. Treating or attempting to treat or diagnose ailments or other health conditions of human beings other than by physical therapy and as authorized by this chapter.

8. Failing to refer to a licensed health care professional any patient whose medical condition at the time of evaluation is determined by the physical therapist to be beyond the scope of practice of physical therapy as defined in section 43-26-01.

9. Failure of a ~~licensed~~ physical therapist to report to the committee any ~~licensed~~ physical therapist the holder knows to be in violation of this section.

10. In the case of a physical therapist assistant, practicing or offering to practice other than under ~~the onsite~~ direction of a ~~licensed~~ physical therapist.

11. Failure to comply with continuing education requirements adopted by the committee.

12. Failure to provide adequate supervision of supportive personnel as required by this chapter or by rule.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 436

SENATE BILL NO. 2062
(Senator W. Stenehjem)

PSYCHOLOGY PRACTICE

AN ACT to amend and reenact sections 43-32-01, 43-32-17, and 43-32-30 of the North Dakota Century Code, relating to the practice of psychology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

43-32-01. Definitions.

1. "Board" ~~shall mean~~ means the North Dakota state board of psychologist examiners.

2. "Practice of psychology" means the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes the rendering of psychological services to individuals, families, groups, and the public and is without regard to whether payment is received for services rendered.

3. "Psychologist" ~~shall mean a person~~ means an individual who ~~holds himself out to the public by any title or description of services representing himself as a psychologist which incorporates the word "psychological", "psychologist", or "psychology", or a person who describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods, and procedures of the science and profession of psychology to persons for compensation or other personal gain~~ is licensed under this chapter in the practice of psychology.

~~3. "Psychology" shall mean the application of established principles of thinking, learning, motivation, perception and emotional relationships to problems of personnel evaluation, group relations, and behavior adjustment by persons trained in psychology. The application of said principles~~

~~includes, but is not restricted to, counseling, and behavior modification with persons or groups with adjustment problems in the areas of work, family, school, and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes, and skills; and doing research on problems relating to human behavior.~~

4. "School or college" means any university or other institution of higher learning that is accredited by a regional accrediting association, offering a full-time graduate course of study in psychology.

SECTION 2. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

43-32-17. License required for practice. ~~No person shall hold himself out as~~ Except as otherwise provided by this chapter, no individual may engage in the practice of psychology or represent that individual to be a psychologist in this state after ~~July~~ August 1, ~~1968~~ 1993, unless ~~he~~ that individual has obtained from the board a license to do so under ~~the provisions of~~ this chapter.

SECTION 3. AMENDMENT. Section 43-32-30 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from the provisions of this chapter. The provisions of this chapter ~~shall~~ do not apply to the following:

1. Any person in the employ of any federal, state, county or municipal agency, or other political subdivision, or any nonprofit corporation or educational institution presently chartered by this state, insofar as the activities and services of ~~such~~ the person are a part of the duties of ~~his~~ the person's office or position with such agency, nonprofit corporation or institution. This exemption ~~shall~~ is not ~~be~~ available or effective after July 1, 1970~~, provided, however, that such~~. However, the exemption period ~~shall~~ may be extended by the board in individual cases where hardship or other good cause is shown by the agency, nonprofit corporation or institution covered ~~hereby~~, or where the person affected ~~hereunder~~ has received from a school or college ~~as defined herein,~~ a master's degree in psychology and ~~his~~ the person's activities and services with such agency, nonprofit corporation or institution are performed under the supervision of a licensed psychologist.

2. A student, intern, or resident in psychology pursuing a course of study in psychology at a school or college ~~as defined in this chapter~~ if such activities and services constitute a part of ~~his~~ the person's supervised course of study if the person does not use the title "psychologist" and the student, intern, or resident status is clearly stated.

3. A nonresident, duly licensed or certified in the state of ~~his~~ the person's residence who does not practice psychology in this state for a period of more than thirty days in any calendar year.

4. ~~Lecturers~~ A lecturer from any school or college who ~~utilize their~~ uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of pschology unless the lecturer is licensed to practice psychology in this state.

5. Any person who is employed by a public school and whose activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption ~~shall apply~~ applies only when the person ~~to be exempted~~ has received a master's degree in school psychology from an accredited graduate training program. Standards ~~will~~ must be established by mutual consent of the board and the ~~department~~ superintendent of public instruction.

6. A person who is certified, licensed, or registered in this state in another health care profession, whose scope of practice is consistent with the accepted standards of that person's profession, and who does not represent to be rendering psychological services.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 437

HOUSE BILL NO. 1359
(Representatives Kroeber, Rydell, Hanson)
(Senators DeMers, Krauter)

ATHLETIC TRAINERS

AN ACT to amend and reenact sections 43-39-01, 43-39-04, 43-39-05, and subsection 1 of section 43-39-10 of the North Dakota Century Code, relating to regulation of athletic trainers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-39-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-39-01. Definitions.

1. "Athletic trainer" means a person with specific qualifications set forth in section 43-39-05, who is ~~furnishing an educational institution, organized amateur athletic association, or similar organization with~~ providing athletic training ~~as defined in this chapter~~.

2. "Athletic training" means the practice of prevention, recognition, evaluation, management, treatment, and disposition~~, and therapy service~~ of athletic injuries ~~, with the last being~~. The term also means rehabilitation of athletic injuries, if under the ~~written authorization~~ order of a licensed physician. ~~Athletic training also~~ The term includes organization and administration of educational programs, athletic facilities, and the education and counseling of the public.

3. "Board" means the North Dakota board of athletic trainers established in section 43-39-02.

4. "Physician" means a doctor of medicine licensed to practice under chapter 43-17.

SECTION 2. AMENDMENT. Section 43-39-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-39-04. Unlawful practice.

1. No person ~~shall~~ may practice or hold ~~himself~~ that person out as being ~~able to practice~~ an athletic ~~training~~ trainer in this state unless ~~he~~ that person is licensed in accordance with this chapter.

2. No person ~~shall~~ may consult, teach, or supervise or hold ~~himself~~ that person out as being able to consult, teach, or supervise athletic training curricular courses in this state unless ~~he~~ that person is licensed in accordance with this chapter or chapter 43-17, or possesses a degree in a health-related field.

3. No person ~~shall~~ may represent ~~himself~~ that person as being a licensed athletic trainer or use in connection with ~~his~~ that person's name any letters, words, or insignia indicating or implying that ~~he~~ the person is a licensed athletic trainer unless ~~he~~ that person is licensed in accordance with this chapter.

~~4. No person shall engage in the private practice of athletic training open to the public for a fee.~~

SECTION 3. AMENDMENT. Section 43-39-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-39-05. Qualifications. To be eligible for an athletic trainer license, an applicant must meet all the requirements of certification established by the national athletic trainers association board of certification, incorporated.

SECTION 4. AMENDMENT. Subsection 1 of section 43-39-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board may refuse to issue a license to an applicant or may suspend or revoke the license of a licensee if the applicant or licensee:

   a. Has been convicted of a felony or misdemeanor involving moral turpitude, the record of a conviction being conclusive evidence of conviction.

   b. Uses alcohol or narcotic drugs to the extent that the use affects ~~his~~ the person's professional competency.

   c. Has obtained or attempted to obtain a license by fraud, deceit, or material misrepresentation.

   d. Is guilty of treating or undertaking to treat ailments of human beings except as authorized pursuant to this chapter, or undertaking to practice independent of the ~~written authorization~~ order of a licensed physician, or is guilty of any act derogatory to the dignity and morals of the profession of athletic training.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 438

SENATE BILL NO. 2079
(Industry, Business and Labor Committee)
(At the request of the Board of Addiction Counseling Examiners)

ADDICTION COUNSELORS

AN ACT to create and enact six new sections to chapter 43-45 of the North Dakota Century Code, relating to licensure of addiction counselors; and to amend and reenact sections 43-45-01, 43-45-02, 43-45-03, 43-45-04, 43-45-06, and 43-45-07 of the North Dakota Century Code, relating to the powers and duties of the board of addiction counseling examiners and licensing of addiction counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-45-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Addiction counseling" means the provision of counseling or assessment of persons regarding their use or abuse of alcohol or a controlled substance.

2. "Board" means the board of addiction counseling examiners.

3. ~~"Internship" means a minimum of a twelve-month, full-time professional experience under the supervision of a clinical supervisor in a licensed addiction treatment facility.~~

~~4.~~ "Practicum" means a minimum of nine months clinical training including inpatient ~~and~~ or outpatient treatment work.

4. "Work experience or internship" means a professional addiction treatment experience under the supervision of a clinical supervisor in a licensed addiction treatment facility or under the authority of a licensed addiction facility.

5. "Private practice of addiction counseling" means the independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling.

SECTION 2. AMENDMENT. Section 43-45-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-02. Board of addiction counseling examiners - Composition. The governor shall appoint a ~~seven-member~~ nine-member board of addiction counseling examiners. The members shall include:

1. ~~Four~~ Six members who are licensed addiction counselors actively engaged in the practice of addiction counseling.

2. Two members who are laypersons.

3. One member who is a ~~director or coordinator of an~~ licensed addiction counselor ~~training program~~ in private practice.

SECTION 3. AMENDMENT. Section 43-45-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-03. Board member terms. The governor, prior to September 1, ~~1987~~ 1993, shall appoint ~~two~~ one new board ~~members~~ member for a term of one year, ~~two~~ and one new board ~~members~~ member for a term of two ~~years, and three board members for a term of three~~ years. Appointments made thereafter must be for three-year terms, but no person may be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the ~~first~~ newly appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.

SECTION 4. AMENDMENT. Section 43-45-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-04. Board power, duties, and authority. The board shall administer and enforce the provisions of this chapter, evaluate the qualifications of applicants, and issue licenses under this chapter. The board shall also approve addiction counselor training programs and internship sites. The board may:

1. Adopt rules under chapter 28-32, relating to licensure of addiction counselors, the establishment of ethical standards of practice for persons holding a license to practice addiction counseling in this state, the establishment of continuing education requirements, ~~and~~ the requirements for approved addiction counselor training programs, internship sites, the requirements for clinical supervisors, the requirements for individuals in the private practice of addiction counseling, and requirements for trainee or internship approval.

2. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.

3. Recommend prosecution for violations of this chapter to the appropriate state's attorney.

4. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.

5. Approve and administer examinations for licensing addiction counselors.

~~4.~~ 6. Collect a fee set by the board on the filing of each application for a license to practice addiction counseling.

~~5.~~ 7. Appoint or employ persons to assist the board in carrying out its duties under this chapter.

SECTION 5. AMENDMENT. Section 43-45-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-06. ~~Licenses~~ Addiction counseling practice - Exemptions.

1. ~~No person may represent to the public that the person is an addiction counselor or engage in the practice of addiction counseling in this state unless that person is a licensed addiction counselor.~~ Nothing in this chapter may be construed to prevent any person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public, by title or by use of the initials L.A.C., that the person is engaging in addiction counseling. ~~Trainees and interns in programs approved by the board to provide addiction counselor training may engage in activities required by the training program without obtaining a license to practice addiction counseling.~~

~~2. The board shall issue an initial one-year license as an addiction counselor to an applicant who:~~

~~a. Has successfully completed coursework, approved by the board, at an accredited college or university;~~

~~b. Has successfully completed an examination approved by the board for this purpose; and~~

~~c. Has successfully completed an addiction counselor training program, approved by the board, a practicum, and an internship.~~

~~3. Upon application prior to January 1, 1988, the board shall issue an initial one-year license as an addiction counselor to any person holding a department of human services certification as an addiction counselor or a master addiction counselor.~~

~~4. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another state, territory of the United States, or province of Canada that imposes substantially the same requirements that are imposed under this chapter.~~

~~5. An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.~~

2. Nothing in this chapter may be construed to prevent students who are enrolled in programs of study leading to addiction counseling degrees from training with a board-approved clinical supervisor.

3. Nothing in this chapter may be construed to prevent trainees or interns in programs approved by the board from engaging in activities required by the approved program without obtaining a license to practice addiction counseling.

SECTION 6. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Representation to the public.

1. A person may not represent to the public that the person is an addiction counselor or engage in the practice of addiction counseling in this state unless the person is a licensed addiction counselor.

2. The license issued by the board under the provisions of this chapter must be prominently displayed at the principal place of business where the addiction counselor practices.

SECTION 7. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Private practice of addiction counseling. A person may not engage in the private practice of addiction counseling unless that person:

1. Is licensed under this chapter as a licensed addiction counselor.

2. Is registered with the board as eligible for private practice under criteria established by board rule.

3. Has a board approved system established for peer review.

4. Upon application prior to January 1, 1994, the board shall register as eligible for private practice of addiction counseling any licensed addiction counselor who at that time is engaged in the private practice of addiction counseling.

SECTION 8. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Licenses.

1. The board shall issue an initial one-year license as an addiction counselor to an applicant who:

   a. Has successfully completed coursework, approved by the board, at an accredited college or university;

   b. Has successfully completed an examination approved by the board for this purpose;

   c. Has successfully completed an addiction counselor training program approved by the board, a practicum, and a work experience or internship; and

   d. Has satisfied the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.

2. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another state, territory of the United States, or province of Canada, or certifying body that imposes substantially the same requirements that are imposed under this chapter.

3. An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

SECTION 9. AMENDMENT. Section 43-45-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-45-07. Renewal of license ~~--Revocation of license~~.

1. The board shall annually renew the initial license of a person licensed under this chapter upon application and showing that:

   a. The holder of the license is in compliance with the provisions of this chapter and the rules adopted under this chapter~~, except that the requirements of subsection 2 of section 43-45-06 do not apply to those addiction counselors licensed pursuant to subsection 3 of section 43-45-06~~.

   b. The holder of the license has successfully completed the continuing education requirements set by the board.

~~2. After notice to the licenseholder and, if demanded within thirty days, after a hearing before the board under chapter 28-32, the board may revoke the license of an addiction counselor upon a showing that the holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:~~

   ~~a. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.~~

   ~~b. Violating rules set by the board.~~

   ~~c. Violating a provision of this chapter.~~

~~3. One year from the date of the revocation, the licenseholder may make application for initial licensure.~~

   c. The holder of a license has made payment of the renewal fees as set by the board.

   d. The license is not currently revoked or suspended.

2. If the application for renewal does not meet the above conditions within six months of the expiration date of the license, the board may revoke the license.

SECTION 10. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Grounds for disciplinary proceedings. The board may deny an application, refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:

1. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.

2. Violating rules set by the board.

3. Violating a provision of this chapter.

4. Violating the professional code of conduct as adopted by the board.

One year from the date of the revocation, the licenseholder may make application for initial licensure.

SECTION 11. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Reporting obligations.

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter may report the violation to the board.

2. The hospital, clinic, or other health care institution, facility, or organization shall report to the board any action taken by the hospital, clinic, or other health care facility, institution, or organization to revoke, suspend, restrict, or condition an addiction counselor's privilege to practice or treat patients in the hospital, clinic, or other health care facility or institution, or as part of the organization, any denial of privileges or any other disciplinary action.

SECTION 12. A new section to chapter 43-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Complaints - Investigations.

1. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and request a written response from the counselor.

2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the complainant.

3. An addiction counselor who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation, and providing copies of patient records when reasonably requested by the board and accompanied by the appropriate release.

4. In order to pursue the investigation, the board has the power to subpoena and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed addiction counselor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interest of the public that this evaluation be secured. A written

request from the board constitutes authorization to release information. The patient records that are released to the board are not public records.

5. Unless there is a patient release on file allowing the release of information at the public hearing, all data and information, including patient records, acquired by the board in its investigation are confidential and closed to the public. All board meetings wherein patient testimony or records are taken or reviewed are confidential and closed to the public. If no patient testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 439

SENATE BILL NO. 2359
(Senators Traynor, Krebsbach)
(Representatives Henegar, Kunkel)

REFLEXOLOGIST LICENSURE

AN ACT to establish a North Dakota board of reflexology and to provide for the licensure of reflexologists; and to create and enact a new subsection to section 43-25-04 of the North Dakota Century Code, relating to massage therapist licensure exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Board" means the North Dakota board of reflexology.
2. "Reflexologist" means a person who uses special pressure techniques on the reflexes in the human feet, hands, and ears and who has studied the principals of reflexology and anatomy and physiology generally included in a regular course of study.
3. "Reflexology" means the application of specific pressure by the use of the practitioner's hands, thumbs, and fingers to reflex points in the client's hands, feet, or ears using alternating pressure, and such techniques as thumb walking, finger walking, hook and back up, and rotation on a reflex.

SECTION 2. Board - Appointment - Terms. The board consists of three licensed reflexologists appointed by the governor except the first board need not consist of licensed members. A person must be a member of the North Dakota reflexology association in order to be eligible for appointment to, and continued membership on, the board. The members must be appointed for three years, staggered so that the term of one member expires as of July first of each year. Each member shall hold office until that member's successor is appointed and qualified. In July of each year the board shall meet at some convenient place within the state and shall elect one member as president, one member as vice president, and one member as secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties. The board may employ, and set the compensation of, employees to assist the secretary-treasurer in the performance of the secretary-treasurer's duties. The board shall hold meetings in the state as determined necessary by the board to discharge its duties. Board members are entitled to receive twenty-five dollars per day and travel expenses in an amount provided by law for state officials and employees when performing the official duties of the board. In addition, the secretary-treasurer is to be paid an extra nine dollars per meeting.

SECTION 3. Removal of members of the board. The governor may remove from office any member of the board for neglect of duties under this Act, malfeasance or incompetency in office, or unprofessional conduct. The governor may fill any

vacancy resulting from removal, resignation, or death of any member of the board. An appointee under this section must be a reflexologist licensed by the board.

SECTION 4. Duties of the secretary-treasurer - Compensation - Expenses of the board. The secretary-treasurer of the board shall:

1. Keep a record of:
   a. The name and address of every person who is licensed to practice in the state;
   b. The license number and date of issuance of the license for each licensed reflexologist;
   c. The renewal date of each license; and
   d. Other information as required by the board.
2. Furnish, upon demand, any person a certified copy of records upon payment of a ten dollar fee plus twenty-five cents for each page copied.
3. Prepare and submit to the governor and the North Dakota reflexology association a detailed annual report on the income and expenses of the board and a list of licensed reflexologists.

SECTION 5. Exemptions. This Act does not apply to the activities or services of physicians, chiropractors, physical therapists, cosmetologists, registered nurses, massage therapists, or members of other professions licensed, certified, or registered by the state who may on occasion apply pressure to the reflex points in the hands, feet, and ears in the course of their work. This Act does not apply to an individual who takes a self-help class and applies reflexology without pay on immediate family members or the individual's body.

SECTION 6. Requisites for licensure. Any person who is eighteen years of age or more and is either a bona fide resident of this state for at least one month immediately preceding the application or is a resident of another state who is practicing reflexology in this state shall submit an application for licensure to the secretary-treasurer of the board. An applicant is entitled to be issued a license as a reflexologist if the applicant:

1. Presents a diploma, certification, or completion credentials issued by a reputable school of reflexology which has submitted its curriculum to the board and has been approved by the board.
2. Presents three character references citing that the applicant is of good moral character.
3. Passes a reasonable demonstrative and written examination in reflexology. If there is an applicant for examination, the board shall conduct an examination at least once a year at a time and place designated by the board. Examinations must be held in the state. An applicant must receive a general average score on the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. The board shall notify the applicant of the applicant's score. An applicant who fails to pass any subject is entitled to a reexamination on that subject within six months upon payment of an additional fee of

fifty dollars or an amount established by the board. Two reexaminations exhaust the privilege under the original application.

4. Pays a licensing fee of seventy-five dollars or an amount set by the board.

SECTION 7. Reciprocity. Notwithstanding the requirements in section 6 for the issuance of a license, the board shall license an individual from another state who applies for licensure, pays the applicable fee, meets or exceeds the requirements set by the board, and who has no imposed or pending disciplinary actions.

SECTION 8. Restriction on use of title. A reflexologist licensed by the board may be held out as a "licensed reflexologist" and may use the abbreviation "L.R." as a part of or immediately following that person's name, in connection with the profession. No person may use the title "licensed reflexologist" unless licensed in accordance with this Act.

SECTION 9. License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice. A license must be recorded in the office of the clerk of the district court in any county where the reflexologist practices within thirty days after issuance.

A license must be renewed before June first of each year. The secretary-treasurer of the board shall mail notice of renewal to each licensed reflexologist's address as shown in the records of the board at least thirty days before the expiration of the license. The notice must include any requests for information necessary for renewal. The licensed reflexologist may renew a license by sending a renewal fee of twenty-five dollars, or an amount set by the board, to the secretary-treasurer of the board, and submitting proof that the reflexologist has attended a seminar on reflexology at least once during the preceding three years. A license that is not renewed by June thirtieth lapses.

SECTION 10. Deposit of fees. The secretary-treasurer shall deposit all fees collected under this Act in a separate account for the administration of this Act.

SECTION 11. Prohibited practices. A reflexologist may not use lotions, creams, or mechanical devices in the application of reflexology. A reflexologist may not diagnose or treat for specific diseases, practice spinal or other joint manipulations, prescribe or adjust medication, and prescribe or administer vitamins.

SECTION 12. Revocation of licensing. The license of a licensed reflexologist may be revoked, suspended, or annulled by the board upon any one or more of the following grounds:

1. That the person is guilty of gross malpractice or incompetence.
2. That the person's mental or physical health endangers public health or safety.
3. That the person fails to comply with rules of the board.
4. That the person is guilty of false or deceptive advertising.
5. That the person engages in unprofessional conduct.

SECTION 13. Administrative procedures. Any person may file a written complaint with the board seeking disciplinary action against a reflexologist for violations of this Act or rules adopted by the board. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, suspension, or nonrenewal or other disciplinary action of a licensed reflexologist, the board shall conduct a hearing. The board may dismiss a complaint that does not state facts that warrant action.

SECTION 14. A new subsection to section 43-25-04 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Reflexologists licensed under sections 1 through 13 of this Act.

Approved April 12, 1993
Filed April 12, 1993

OFFICES AND OFFICERS

CHAPTER 440

SENATE BILL NO. 2247
(Senators Lindgren, Maxson)
(Representative Soukup)

CITY AND COUNTY OFFICER RESIDENCY

AN ACT to amend and reenact section 44-03-04 of the North Dakota Century Code, relating to residency requirements for deputy officers in county and city government.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-03-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-03-04. Officials to be residents and citizens ~~— Exception for deputy clerks of district court~~. No person may be appointed as deputy in any state~~, county, or municipal~~ office nor as a member or officer upon any official board of the state, or of any county or municipality of the state, who is not a citizen of the United States and who is not a bona fide resident of the state. ~~However, a clerk of the district court may appoint a deputy who is a bona fide resident of an adjoining county in another state.~~

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 441

HOUSE BILL NO. 1497
(Representatives Poolman, Wald, Mahoney, Dorso)
(Senators Holmberg, Keller)

OPEN RECORDS AND CONFIDENTIALITY

AN ACT to amend and reenact sections 44-04-18 and 44-04-18.4 of the North Dakota Century Code, relating to copying of open records and confidentiality of trade secrets and commercial and financial information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18. Access to public records - Penalty.

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. The entity may charge a reasonable fee for making the copy. Fees received under this subsection are public moneys and must be deposited as provided by law. An entity may require payment before making the copy. If the entity is not authorized to use the fees to cover the cost of providing the copy, the entity may make arrangements for the copy to be provided by another entity, public or private, and the requester shall pay the fee to that other entity.

3. Violations of this section shall be punishable as an infraction.

SECTION 2. AMENDMENT. Section 44-04-18.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-04-18.4. Confidentiality of trade ~~secrets and~~ secret, proprietary, commercial, and financial information.

1. Trade ~~secrets and~~ secret, proprietary, commercial, and financial information ~~are~~ is confidential if it is of a privileged ~~or confidential~~ nature and ~~obtained by any state agency, institution, department, or board from any person or organization under a contract or license agreement entered into by any state agency, institution, department, or board~~ it has not been previously publicly disclosed. ~~The term "trade secrets"~~

2. "Trade secret" includes ~~a~~:

a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use; and

b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any state agency, institution, department, or board which is the subject of efforts by the supplying person, business, or industry to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use.

3. "Proprietary information" includes information received from a sponsor of research conducted by an institution, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced at the institution which an employee, institution, or the board intends to commercialize.

4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health and consolidated laboratories or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

5. An institution of higher education shall include justification for maintaining the confidentiality of information as to each grant or contract involving confidential information in the institution's regular report to the board of higher education of grants and contracts received. The justification must contain general information required by the board, and must include at least the following nonconfidential information:

a. A general description of the nature of the information sought to be protected;

b. A general explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;

c. A general explanation of why the information is not readily ascertainable through proper means by other persons;

d. A general description of the persons or entities that would obtain economic value from disclosure or use of the information, and how they would obtain this value; and

e. A general description of the efforts used to maintain the secrecy of the information.

The board of higher education shall review the justification at a public meeting of the board, and shall decide if the confidential status should be maintained for the project. If the board decides against granting the confidential status, the justification may be resubmitted at the next meeting of the board and the confidential status may be maintained until that time. If the board again decides, upon reconsideration, not to grant confidentiality, the information becomes public.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 442

SENATE BILL NO. 2273
(Senators Graba, B. Stenehjem)
(Representative Glassheim)

EXAMINATION INFORMATION CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to an exception to the open records law for certain examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of examination questions and procedures. The following records are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: examination or test questions, scoring keys, and other data used to administer any licensing, employment, academic, or certification examination or test, if the examination or test is to be used again in whole or in part; and records establishing examination or test procedures and instructions regarding the administration, grading, or evaluation of any examination or test, if disclosure may affect scoring outcomes.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 443

SENATE BILL NO. 2239
(Senator Nalewaja)
(Representative Wald)

NOTARY PUBLIC RESIDENCY

AN ACT to amend and reenact section 44-06-01 of the North Dakota Century Code, relating to the appointment and qualifications of notaries public.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-01. Appointment and qualification of notaries public. The secretary of state shall appoint ~~in each county in this state one or more~~ notaries public~~, who shall hold~~. A notary holds office for six years unless sooner removed by the secretary of state. Each notary ~~shall have power and authority anywhere in the state to~~ may administer oaths and perform all other duties required by law. A ~~person, to be eligible to such appointment, at the time of appointment,~~ notary public must have the qualifications of an elector as to age and residence or must reside in a county that borders this state and which is in a state that extends reciprocity to a notary public who resides in a border county of this state. If the person resides in a county bordering this state, that person must designate the secretary of state as the agent for service of process, for all purposes relating to notarial acts, including the receipt of correspondence relating to notarial acts.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 444

HOUSE BILL NO. 1408
(Representative Christopherson)

STATE EMPLOYEE OUT-OF-STATE MEALS

AN ACT to amend and reenact section 44-08-04 of the North Dakota Century Code, relating to reconciliation of state law to federal laws regarding out-of-state meal reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-04. Expense account - Amount allowed - Verification. Except as provided in section 44-08-04.1, each elective or appointive officer, employee, representative, or agent of this state, or of any of its subdivisions, agencies, bureaus, boards, or commissions, may make claim for meals and lodging while engaged ~~within this state~~ in the discharge of a public duty away from the claimant's normal working and living residence for all or any part of any quarter of a day. Claims may also be made for meals which are included as part of a registration fee for a conference, seminar, or other meeting and for meals attended at the request of and on behalf of the state or any of its subdivisions, agencies, bureaus, boards, or commissions; however, if a meal is included in a registration fee, the applicable quarter allowance cannot be claimed for that meal. Claims for meals specifically included in a registration fee for a conference, seminar, or other meeting must be allowed even if the city at which the conference, seminar, or meeting is held or the meal is provided is the claimant's normal working and living residence. Upon approval of the claim, it must be paid as an allowance at the following rates for each quarter of any twenty-four-hour period:

1. First quarter is from six a.m. to twelve noon and the sum may not exceed three dollars and fifty cents in state~~, or six dollars out of state~~. No reimbursement may be made if travel began after seven a.m.

2. Second quarter is from twelve noon to six p.m. and the sum may not exceed five dollars in state~~, or nine dollars out of state~~.

3. Third quarter is from six p.m. to twelve midnight and the sum may not exceed eight dollars and fifty cents in state~~, or fifteen dollars out of state~~.

4. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed thirty-five dollars.

5. Provided, however, that the ~~preceding four subsections~~ allowances provided by this section are not applicable unless the person concerned has been out of the headquarters or normal place of employment for four hours or overnight.

The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated twenty percent to the first quarter, thirty percent to the second quarter, and fifty percent to the third quarter.

Verifications of claims may not be required for the first three quarters listed above and only a lodging receipt is required for the fourth quarter.

Such persons engaged in travel outside state boundaries shall receive actual lodging expenses. Verification by receipt for such out-of-state travel expense is required only for lodging expense claimed.

Those persons engaged in ~~foreign~~ travel outside the continental United States shall receive reimbursement for meals at a rate not to exceed two times the regular out-of-state meal allowance with the exception of Canadian travel, which will be reimbursed at regular out-of-state meal allowance rates. Verification by receipt for such ~~foreign~~ travel expense outside the continental United States is required only for the lodging expense claimed. For purposes of this section, "regular out-of-state meal allowance" means the per diem meals rate on that day as established for federal employees in nonhigh rate geographical areas by the United States general services administration.

The head of any department, institution, or agency of this state may set a rate for such expenses less than those set forth in this section for any person or persons under his authority. Verification of any other type of expense not prescribed by this section must be as prescribed by the office of the budget except no receipt may be required for taxi or cab fares up to and including the sum of ten dollars. The office of management and budget shall disapprove any claim it determines to be in error or unlawful or not within the limits of legislative appropriations.

Approved April 8, 1993
Filed April 9, 1993

PARTNERSHIPS

CHAPTER 445

HOUSE BILL NO. 1509
(Representative Stenehjem)

LIMITED PARTNERSHIP FILING CHANGES

AN ACT to amend and reenact sections 45-10.1-08, 45-10.1-09, 45-10.1-52, and 45-10.1-55 of the North Dakota Century Code, relating to limited partnership requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-10.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-08. (201) Certificate of limited partnership.

1. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate must set forth:

   a. The name of the limited partnership.

   b. The general character of its business.

   c. The address of the office and the name and address of the agent for service of process required to be maintained by section 45-10.1-04.

   d. The name and ~~the business~~ address of the principal place of business of each general partner.

   e. The latest date upon which the limited partnership is to dissolve.

   f. Any other matters the general partners determine to include therein.

2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 2. AMENDMENT. Section 45-10.1-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-09. (202) Amendment to certificate.

1. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate must set forth all of the following:

   a. The name of the limited partnership.

   b. The date of filing the certificate.

c. The amendment to the certificate.

2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within thirty days after the happening of any of the following events:

   a. The admission of a new general partner.

   b. The withdrawal of a general partner.

   c. The continuation of the business under section 45-10.1-47 after an event of withdrawal of a general partner.

   d. A change of office or an agent.

3. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

5. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.

6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

7. A limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. A corporate annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

8. A limited partnership that amends its name and is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the amendments.

9. Whenever a general partner that is a corporation files an amendment, or application for an amended certificate of authority, to change its corporate name it must simultaneously file an amendment to a certificate of limited partnership.

SECTION 3. AMENDMENT. Section 45-10.1-52 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **45-10.1-52. (902) Registration.** Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.
2. The state and date of its formation.
3. The general character of the business it proposes to transact in this state.
4. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state.
5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
6. The address of the principal office of the foreign limited partnership.
7. The name and ~~business~~ address of the principal place of business of each general partner.
8. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the proper officer of the state or country under the laws of which it is organized.

SECTION 4. AMENDMENT. Section 45-10.1-55 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-55. (905) Changes and amendments. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

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[1] NOTE: Section 45-10.1-52 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

A foreign limited partnership that amends its name and is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the certificate amending the registration of foreign limited partnership.

A foreign limited partnership must file a certificate of amendment, signed and sworn to by a general partner, whenever a general partner that is a corporation files an amendment changing its corporate name, or when it files an application for an amended certificate of authority. This certificate of amendment must be filed simultaneously with the amendment to the articles of incorporation or application for amended certificate of authority.

A foreign limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. A corporate annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 446

SENATE BILL NO. 2158
(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

FICTITIOUS NAME CERTIFICATES

AN ACT to create and enact section 45-11-05.1 of the North Dakota Century Code, relating to the change of name of a member named on a fictitious name certificate; and to amend and reenact sections 45-11-02 and 45-11-06 of the North Dakota Century Code, relating to fictitious name certificate requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-11-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-02. How certificate executed - Content. A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by one or more of the general partners. The certificate must state the fictitious name, the names in full and principal addresses of all the general partners, ~~their places of residence,~~ and the address of the principal place of business.

SECTION 2. Section 45-11-05.1 of the North Dakota Century Code is created and enacted as follows:

45-11-05.1. Change of name or address of member. Any member named on a fictitious name certificate that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of twenty-five dollars and filing of the following:

1. A notarized statement reciting the name change if the member is an individual.
2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the member is a corporation or limited partnership incorporated or organized in another state or country which does not have a certificate of authority to transact business in North Dakota.
3. An amendment or application for amended certificate of authority for a member that is a corporation or limited partnership registered with the secretary of state.

A registrant must notify the secretary of state in writing when effecting a change of address. A corporate annual report or limited partnership renewal filed by the secretary of state which reflects a change of address of the principal place of business of the member may serve as such notice.

SECTION 3. AMENDMENT. Section 45-11-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-06. Duty of secretary of state regarding fictitious name certificate. The secretary of state shall keep an alphabetical file of the fictitious names filed with the secretary of state under this chapter. ~~All documents filed with the secretary of state under this chapter must be retained in that office until the documents have been committed to microcopy, at which time the documents may be destroyed.~~ The secretary of state may destroy all fictitious name certificates or renewals one year after expiration.

Approved March 4, 1993
Filed March 5, 1993

PRINTING LAWS

CHAPTER 447

SENATE BILL NO. 2382
(Senator Lips)

STATE PRINTING WORK BONDS

AN ACT to amend and reenact section 46-02-07 of the North Dakota Century Code, relating to performance bond requirements for state printing work.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-02-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-07. Proposals - How made ~~- Bond required~~. Each proposal for each class of state printing let under competitive bids must be in writing, sealed, and addressed to the office of management and budget. ~~The successful bidder will be required to submit a performance bond, as specified in the bid.~~ The office of management and budget may reject any bid made by anyone other than a regularly established and thoroughly competent printer and also may reject any or all bids if in its judgment the best interests of the state would be subserved thereby.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 448

SENATE BILL NO. 2437
(Senators Nelson, Mathern)

SESSION LAWS SALES

AN ACT to amend and reenact section 46-04-18 of the North Dakota Century Code, relating to charges for and disposal of session laws volumes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-04-18 of the North Dakota Century Code is amended and reenacted as follows:

46-04-18. Secretary of state to sell certain laws. ~~Volumes of the laws of this state, excluding the North Dakota Century Code, shall be sold by the secretary of state to any person applying therefor at cost plus ten per cent.~~ During the biennium immediately after publication, the secretary of state must sell copies of the session laws for the cost of publication and handling plus ten per cent. In subsequent bienniums the secretary of state may determine and set a price for the copies of the session laws not sold in the biennium immediately after their publication. The price set should maximize the recovery of the cost of publication and handling and minimize the number of volumes subject to disposal under section 46-04-19. All moneys received under the provisions of this section shall be paid over to the state treasurer and credited to the general fund.

Approved March 22, 1993
Filed March 23, 1993

PROPERTY

CHAPTER 449

RULE AGAINST PERPETUITIES

SENATE BILL NO. 2044
(Legislative Council)
(Interim Judiciary Committee)

AN ACT to amend and reenact subsection 5 of section 47-02-27.1 of the North Dakota Century Code, relating to the invalidity of certain contingent property interests, general powers of appointment, special powers of appointment, and general testamentary powers of appointment under the uniform statutory rule against perpetuities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 47-02-27.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to ~~postpone~~ disallow the vesting or termination of any interest or trust ~~until~~ beyond, ~~disallow~~ seeks to postpone the vesting or termination of any interest or trust ~~beyond~~ until, ~~require all interests or trusts to vest or terminate no later than,~~ or seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, ~~then the portion of the~~ that language ~~described in (b)~~ is inoperative ~~if and~~ to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the specified lives ~~specified in the portion of the language described in (a)~~.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 450

HOUSE BILL NO. 1337
(Representatives Rydell, Bernstein, Kroeber)
(Senators Graba, Schoenwald, B. Stenehjem)

CONSUMER RENTAL PURCHASE AGREEMENTS

AN ACT relating to the rental and acquisition of ownership of personal property through consumer rental purchase agreements; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Advertisement" means a commercial message in any medium that aids, promotes, or assists a consumer rental purchase agreement.

2. "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property.

3. "Consumer" means an individual who rents property under a consumer rental purchase agreement.

4. "Consumer rental purchase agreement" includes an agreement for the use of property by a consumer primarily for personal, family, or household purposes for an initial period of four months or less, regardless of whether there is any obligation beyond the initial period; which is automatically renewable with each payment after the initial period but does not obligate or require the consumer to continue renting or using the property beyond the initial period, and which permits the consumer to become the owner of the property under the terms of the consumer rental purchase agreement. The term does not include:

   a. A rental purchase agreement primarily for business, commercial, or agricultural purposes, or an agreement with a governmental agency or instrumentality or organizations.

   b. A lease or agreement that constitutes an installment sale or installment contract as defined in section 51-13-01.

   c. A lease of a safe deposit box.

   d. A lease or a bailment of personal property incidental to the lease of real property and which contains no provision for the consumer to have an option to purchase the leased property.

   e. A lease of a motor vehicle.

   f. A hiring defined under chapter 47-15.

g. A security interest under chapter 41-09.

5. "Consummation" means the time at which a consumer becomes contractually obligated on a consumer rental purchase agreement.

6. "Lessor" includes a person who regularly provides the use of property through consumer rental purchase agreements and to whom rental payments are initially payable on the face of a consumer rental purchase agreement.

SECTION 2. Inapplicability of other laws. Consumer rental purchase agreements under this Act are not governed by the laws relating to a retail installment contract or a retail installment sale as defined in section 51-13-01 or security interest as defined in section 41-01-11.

SECTION 3. Disclosure of information.

1. A lessor shall include in a consumer rental purchase agreement:

a. The total number, total amount, and timing of all payments necessary to acquire ownership of the property.

b. A statement that the consumer does not own the property until the consumer has made the total payments necessary to acquire ownership.

c. A statement that the consumer is responsible for the fair market value of the property at the time it is lost, stolen, damaged, or destroyed, if that is the intent of the lessor.

d. A description of the leased property sufficient to identify the property to the consumer and the lessor, including any identification numbers, if applicable, in a statement indicating whether the property is new or used. A statement indicating that the property is used when in fact it is new is not a violation of this Act.

e. A statement of the cash price of the property. If the agreement includes a lease of two or more items as a set, in one agreement, a statement of the aggregate cash price of all the items is sufficient.

f. The total of initial payments paid or required to be paid at or before consummation of the agreement or delivery of the property, whichever is later.

g. A statement that the total amount of a payment does not include other charges such as late payment penalties; default, pick-up, or reinstatement fees; and other fees which must be separately disclosed in the contract.

h. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise any early purchase options and the price or formula or method for determining the price at which the property may be purchased at any given time.

i. A statement identifying the party responsible for maintaining or servicing the property while the property is being leased, together with a description of that responsibility, and a statement that if any

part of the manufacturer's express warranty covers the leased property at the time the consumer acquires ownership of the property, the warranty is transferred to the consumer, if allowed by the terms of the warranty.

j. The date of the transaction, the identification of the lessor and consumer, and the address where the property will be primarily located during the possession of the consumer under the commercial rental purchase agreement.

k. A statement that the consumer may terminate the agreement at any time without penalty by voluntarily surrendering or returning the property in good repair, ordinary wear and tear excepted, along with any payment of any past due rent.

l. Notice of the right to reinstate an agreement as provided in this Act.

m. A statement that the lessor is required by law to provide the consumer a written receipt, upon request by the consumer at the lessor's place of business, for each payment made by cash or money order.

2. A consumer rental purchase agreement must contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, substantially the following language:

NOTICE TO CONSUMER - READ
BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF TOLD YOU DO NOT NEED TO.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

3. In a transaction involving more than one lessor, only one lessor is required to make the disclosures, but all lessors are bound by the disclosures. The disclosures must be made before the consumer rental purchase agreement is executed. The disclosures must be made clearly and conspicuously in writing in at least eight-point type and a copy of the disclosures and the consumer rental purchase agreement must be provided to the consumer. If a disclosure becomes inaccurate as a result of any act or occurrence caused by the consumer or by an agreement or consent entered into after delivery of the required disclosures, the resulting inaccuracy is not a violation of this Act.

4. Compliance with the Federal Consumer Leasing Act of 1976 [Pub. L. 94-240; 90 Stat. 257; 15 U.S.C. 1601, 1640, 1667-1667e] regarding disclosures in consumer rental purchase agreements satisfies the requirements of this section.

SECTION 4. Prohibited provisions and agreements. A consumer rental purchase agreement may not contain the following provisions, and, such included provision is not enforceable:

1. A confession of judgment.

2. A negotiable instrument.

3. A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the consumer rental purchase agreement.

4. A wage assignment.

5. A waiver by the consumer of claims or defenses.

6. A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of the goods.

SECTION 5. Reinstatement of agreement - Repossession.

1. A consumer who fails to make a timely rental payment may reinstate the agreement without losing any right or option that exists under the agreement by the payment of:

   a. All past-due rental charges;

   b. The reasonable costs of repossession and redelivery if the property has been repossessed; and

   c. Any applicable late fee within five days of the renewal date if the consumer pays monthly, or within two days of the renewal date if the consumer pays more frequently than monthly. A late fee may not be more than three dollars or five percent of the delinquent lease payment, whichever is greater.

2. If a consumer has paid less than two-thirds of the total amount of payments necessary to acquire ownership and the consumer has returned or voluntarily surrendered the property other than through judicial process during the applicable reinstatement period set forth in this section, the consumer may reinstate the agreement during a period of not less than thirty-one days after the date of the return of the property.

3. If a consumer has paid two-thirds or more of the total amount of payments necessary to acquire ownership and the consumer has returned or voluntarily surrendered the property other than through judicial process during the applicable period set forth in this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.

4. This section does not prevent a lessor from attempting to repossess property during the reinstatement period. A repossession does not affect the consumer's right to reinstatement. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

SECTION 6. Renegotiation for new agreement - Extensions.

1. A renegotiation of an agreement occurs when an existing consumer rental purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation is considered a new agreement requiring new disclosures. The following events may not be treated as a renegotiation:

   a. The addition or return of property in a multiple-item agreement or in the substitution of leased property if the average payment allocation to a payment is not changed by more than twenty-five percent.

   b. A deferral of extension of one or more periodic payments or portions of a periodic payment.

   c. A reduction in charges in the lease or agreement.

   d. A lease or agreement that has become the basis for a legal action.

2. No disclosure is required for any extension of a consumer rental purchase agreement under the same terms as the original agreement except for the extension.

SECTION 7. Advertisement of consumer rental purchase agreement.

1. If an advertisement for a consumer rental purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership of any one specific item, the advertisement must also clearly and conspicuously state the following items, as applicable:

   a. That the transaction advertised is a consumer rental purchase agreement;

   b. The total amount of payments necessary to acquire ownership; and

   c. That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

2. Any owner or personnel of a medium in which an advertisement appears or through which an advertisement is disseminated is not liable for a violation of this section.

3. This section does not apply to any advertisement that does not refer to or state the amount of any payment or which is published on radio, in the yellow pages of a telephone directory, or in any similar directory of business.

SECTION 8. Penalties - Remedies - Lessor to preserve evidence.

1. A lessor who fails to comply with this Act is liable to the consumer for:

   a. The greater of the actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total payments necessary to acquire ownership, but not less than one hundred dollars nor more than one thousand dollars; and

   b. The costs of the action and reasonable attorney's fees.

2. A lessor who violates section 7 of this Act is liable to the consumer for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

3. If there is more than one lessor, liability may be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability must be imposed jointly and severally on all lessors.

4. When there is more than one consumer, there may be only one recovery of damages under subsection 1.

5. Multiple violations in connection with a single consumer rental purchase agreement entitle a consumer to only one recovery under this section.

6. A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection 1 against any amount owed by the consumer unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this Act as an original action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.

7. In connection with any transaction under this Act, the lessor shall preserve evidence of compliance with this Act for not less than two years from the date of consummation of the agreement.

SECTION 9. EFFECTIVE DATE. This Act becomes effective on January 1, 1994.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 451

SENATE BILL NO. 2281
(Senators Freborg, Krauter)
(Representatives Porter, St. Aubyn, Wald)

RENT CONTROLS PROHIBITED

AN ACT to prohibit political subdivisions from estabishing rent controls.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Rent controls - Prohibited. A political subdivision may not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property. This section does not impair the right of a political subdivision to manage and control residential property in which the political subdivision has a fee title interest.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 452

HOUSE BILL NO. 1507
(Representative Christopherson)

TRADEMARK REGISTRATION CHANGES

AN ACT to create and enact section 47-22-06.1 of the North Dakota Century Code, relating to the change of name of a trademark owner; and to amend and reenact sections 47-22-03 and 47-22-08 of the North Dakota Century Code, relating to trademark requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-22-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **47-22-03. Application for registration.** Subject to the limitations set forth in this chapter, any person who adopts and uses a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; ~~and,~~ if a corporation, the state or country of incorporation and address of the principal place of business; and if a limited partnership, the state or country of the organization and address of the principal place of business;

2. The goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods and the class, or classes, in which such goods fall;

3. The date when the trademark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business; and

4. A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application must be signed by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application must be accompanied by a specimen or facsimile of such trademark in duplicate.

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[1] NOTE: Section 47-22-03 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

The application for registration must be accompanied by a filing fee of thirty dollars for one class of goods and twenty dollars for each additional class, payable to the secretary of state.

SECTION 2. Section 47-22-06.1 of the North Dakota Century Code is created and enacted as follows:

47-22-06.1. Change of name or address of registrant. Any registrant that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of thirty dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual.

2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation or limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota.

3. An amendment or application for amended certificate of authority for a registrant that is a corporation or limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state in writing when effecting a change of address. A corporate annual report or limited partnership renewal filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

SECTION 3. AMENDMENT. Section 47-22-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-22-08. Cancellation. The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state shall receive a voluntary written and signed request for cancellation thereof from the registrant or the assignee of record.

2. All registrations granted under this chapter and not renewed in accordance with the provisions hereof.

3. Any registration concerning which a state district court shall find any of the following:

   a. That the registered trademark has been abandoned.

   b. That the registrant is not the owner of the trademark.

   c. That the registration was granted improperly.

d. That the registration was obtained fraudulently.

e. That the registration trademark is so similar, as to be likely to cause confusion or mistake or to deceive, to a trademark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his trademark in the United States Patent Office covering an area including this state, the registration hereunder shall not be canceled.

4. When a district court shall order cancellation of a registration on any ground.

5. Any trademark whose registered owner is a corporation or limited partnership that has ceased to exist for six months.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 453

HOUSE BILL NO. 1043
(Legislative Council)
(Interim Judiciary Committee)

UNIFORM TRANSFERS TO MINORS ACT ACCOUNTS

AN ACT to amend and reenact subdivision b of subsection 1 of section 47-24.1-09 of the North Dakota Century Code, relating to the manner of creating custodial property and effecting transfers under the Uniform Transfers to Minors Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 47-24.1-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the North Dakota Uniform Transfers to Minors Act";

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 454

HOUSE BILL NO. 1472
(Representative C. Carlson)

TRADE NAMES

AN ACT to create and enact section 47-25-06.1 of the North Dakota Century Code, relating to the change of name or address of a trade name registrant; and to amend and reenact sections 47-25-02, 47-25-04, and 47-25-07 of the North Dakota Century Code, relating to trade name requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-25-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-02. Trade name - Registration - Statement - Contents. Any person who engages in business in this state under a trade name may register with the secretary of state for purposes of registering a trade name, a statement executed by ~~each~~ the owner upon ~~blanks furnished~~ forms prescribed by the secretary of state, setting forth: (1) the trade name to be registered, (2) the name ~~or names~~ and ~~addresses~~ address of ~~each and every~~ the owner of the business, and if a corporation, the state or country of incorporation and address of the principal place of business, and (3) the nature of the business in detail.

SECTION 2. AMENDMENT. Section 47-25-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-04. Trade names - Registration - Fees - Renewal - Notice. For the registration of a trade name under this chapter, the registrant shall pay to the secretary of state a fee of twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and a fee of ten dollars for a consent to use of a similar name or any other change in the original registration under this chapter. A registration remains in force for a period of five years from the date of the original registration and may be renewed within thirty days before its expiration date by reregistering in the same manner as an original registration. The secretary of state shall notify the registrant by mail at least ninety days before the expiration of the registration.

The secretary of state may destroy all registrations or renewals one year after expiration.

SECTION 3. Section 47-25-06.1 of the North Dakota Century Code is created and enacted as follows:

47-25-06.1. Change of name or address of registrant. Any registrant that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of twenty-five dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual;

2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation or limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota; or

3. An amendment or application for amended certificate of authority for a registrant that is a corporation or limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state in writing when effecting a change of address. A corporate annual report filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

SECTION 4. AMENDMENT. Section 47-25-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-07. Cancellation. The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state receives a voluntary written and signed request for cancellation from the registrant or the assignee of record.

2. Any registration concerning which a state district court finds any of the following:

   a. That the registered trade name has been abandoned.

   b. That the registrant is not the owner of the trade name.

   c. That the registration was granted improperly.

   d. That the registration was obtained fraudulently.

   e. That the trade name registered is so similar to a trade name registered by another person as to be likely to cause confusion or mistake or to deceive.

3. Any registration a district court orders canceled on any grounds.

4. Any trade name when the registrant is a corporation that has ceased to exist for six months.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 455

SENATE BILL NO. 2104
(Industry, Business and Labor Committee)
(At the request of the Board of University and School Lands)

ABANDONED PROPERTY ADMINISTRATION

AN ACT to amend and reenact sections 47-30.1-03.1, 47-30.1-10, and subsection 1 of section 47-30.1-19 of the North Dakota Century Code, relating to abandoned property; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-30.1-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-30.1-03.1. Property originated or issued by this state, any political subdivision of this state, or any entity incorporated, organized, ~~or~~ created, or otherwise located in this state.

1. All intangible property, including any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within three years after the date prescribed for payment or delivery, is presumed abandoned and subject to the custody of this state as unclaimed property if:

   a. The address of the owner is unknown; and

   b. The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or is incorporated, organized, ~~or~~ created, or otherwise located in this state.

2. The provisions of subsection 1 do not apply to property that is or may be presumed abandoned and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different from that prescribed in subsection 1.

3. The provisions of subsection 1 apply to all property held on July 1, 1991, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

SECTION 2. AMENDMENT. Section 47-30.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-30.1-10. Stock and other intangible interests in business associations.

1. Except as provided in subsections 2 and 5, stock or other intangible ownership interest in a business association, the existence of which is

evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for ~~seven~~ five years and the owner within ~~seven~~ five years has not:

a. Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

b. Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

2. At the expiration of a ~~seven-year~~ five-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least ~~seven~~ five dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If ~~seven~~ five dividends, distributions, or other sums are paid during the ~~seven-year~~ five-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution, or other sum became due and payable. If ~~seven~~ five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been ~~seven~~ five dividends, distributions, or other sums that have not been claimed by the owner.

3. The running of the ~~seven-year~~ five-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection 1. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

4. At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

5. This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within ~~seven~~ five years communicated in any manner described in subsection 1.

SECTION 3. AMENDMENT. Subsection 1 of section 47-30.1-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsections 2 and 3, a person who is required to file a report under section 47-30.1-17, ~~within six months~~

~~after~~ no sooner than March first and no later than May first following the final date for filing the report as required by section 47-30.1-17, shall pay or deliver to the administrator all abandoned property required to be reported.

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

Approved February 26, 1993
Filed February 26, 1993

CHAPTER 456

SENATE BILL NO. 2101
(Government and Veterans Affairs Committee)
(At the request of the Board of University and School Lands)

ABANDONED PROPERTY AUDIT RECORDS

AN ACT to create and enact a new section to chapter 47-30.1 of the North Dakota Century Code, relating to making confidential the audit records under the uniform abandoned property act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-30.1 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Confidentiality of audit records - Civil penalty.

1. Documentation and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an audit for unclaimed property under chapter 47-30.1 are confidential and are not public records under section 44-04-18 and section 5 of article XI of the Constitution of North Dakota, except in the following circumstances:

   a. When used by the administrator to bring an action to collect unclaimed property, to collect any unpaid interest due on unclaimed property, or to otherwise enforce chapter 47-30.1;

   b. When used in joint audits conducted with or pursuant to agreements with other states, the federal government, or other governmental entities;

   c. Pursuant to subpoena or court order; or

   d. By written consent of the person, institution, business, or entity that was audited.

2. The administrator's final, completed audit reports are records open to the public. The final reports may not contain confidential documentation or working papers unless one of the exceptions provided under subsection 1 applies.

3. a. The administrator or any state employee conducting an audit on the administrator's behalf may not disclose confidential information when auditing financial institutions, except as required to perform duties required under this chapter. Any other person or entity performing an audit for unclaimed property may not disclose confidential information concerning a financial institution or other holder to any person or other entity except the administrator.

b. Any person or entity, other than the administrator or any state employee conducting an audit on the administrator's behalf, who intentionally discloses information in violation of this section is liable to the person or entity that was audited in an amount equal to the greater of one thousand dollars or the actual damages caused by the disclosure of the information. Any person who discloses information in good faith reliance on this section is not liable for that disclosure.

4. The administrator and any state employee conducting an audit on the administrator's behalf are exempt from chapter 6-08.1.

Approved April 19, 1993
Filed April 20, 1993

PUBLIC BUILDINGS

CHAPTER 457

HOUSE BILL NO. 1385
(Representatives Clayburgh, Payne)
(Senator Freborg)

PUBLIC IMPROVEMENT CONTRACTOR DEFINED

AN ACT to create and enact a new section to chapter 48-01 of the North Dakota Century Code, relating to the definition of contractors for public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 48-01 of the North Dakota Century Code is created and enacted as follows:

Definition of contractor. In this chapter, unless the context or subject matter otherwise requires, the term "contractor" means any person or entity that undertakes or enters into a contract with any public office or board authorized to enter into contracts for the erection, repair, or alteration of any public building, or any public improvement, except a municipal improvement made under special assessment statutes.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 458

SENATE BILL NO. 2201
(Government and Veterans Affairs Committee)
(At the request of the Water Commission)

PUBLIC BUILDING IMPROVEMENT BIDS

AN ACT to amend and reenact section 48-02-03 of the North Dakota Century Code, relating to the maximum cost of alterations or improvements to public buildings which may be done without competitive bidding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-02-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-03. Method used in securing bids - Emergency waiver. The governing board shall advertise for bids for the doing of the work for which plans, drawings, and specifications are required by section 48-02-02. Such advertisement shall be published for three successive weeks, the first publication thereof to be at least twenty-one days prior to the date of the opening of bids thereunder. Such advertisement shall be published in the official newspaper of such municipality or political subdivision, and also in some trade publication of general circulation among the contractors, building manufacturers, and dealers of this state. Alterations or improvements may be accomplished by a state department or institution on competitive bids or on a time and material basis or by institutional personnel if the total cost of any one project does not exceed the sum of ~~twenty-five~~ fifty thousand dollars. In instances where a contractor is performing work on a time and material basis, all materials and all labor supplied by such contractor must be obtained by competitive estimates from qualified suppliers for projects. The requirements of this section may be waived by the governing board if it determines that an emergency situation exists requiring the prompt destruction, demolition, or repair of an existing building, facility, or portion thereof, and a contract may be made for such prompt destruction, demolition, or repair without seeking bids.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 459

SENATE BILL NO. 2478
(Senators Lindgren, Maxson)
(Representatives Clayburgh, Dorso)

INFRASTRUCTURE DEVELOPMENT AGREEMENTS

AN ACT to provide for infrastructure construction, improvement, rehabilitation, operation, or management by private operators and to provide for development agreements between public authorities and private operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Build, operate, and transfer facility" means a build, operate, and transfer fee-based facility constructed, improved, or rehabilitated and afterward operated by a private operator who holds title to the facility subject to a development agreement that includes a provision that title will be transferred or revert to the public authority on expiration of an agreed term.

2. "Build, transfer, and operate facility" means a build, transfer, and operate fee-based facility constructed, improved, or rehabilitated by a private operator who:

   a. Transfers the interest it may have in the facility to the public authority before operation begins; and

   b. Operates the fee-based facility for an agreed term pursuant to a lease, management, or concession agreement.

3. "Development agreement" means a written agreement by and between a public authority and a private operator which memorializes the parties' agreement with respect to the construction, improvement, rehabilitation, ownership, or operation of a fee-based facility. A development agreement must satisfy the requirements of section 3 of this Act.

4. "Fee-based facility" means a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority. The facility may be a library, city hall, and an appurtenant building, a water or sewage treatment plant, or other public improvement; land lying within applicable rights of way; and other appurtenant rights or hereditaments that together comprise a project for which a private operator is authorized to operate or own and impose fees or derive a rent as expressed in the development agreement.

5. "Private operator" means a private person, a corporation or partnership, a cooperative or unincorporated association, a joint venture or consortium that constructs, improves, rehabilitates, owns, leases, operates, or

manages a fee-based facility subject to this Act. The term includes related parties and entities that together perform some or all of these functions for the same facility.

6. "Public authority" means the state subject to legislative authority, a county, township, or city when ownership of or jurisdiction over a fee-based facility has been tendered to and accepted by said authority.

SECTION 2. Private operators. Notwithstanding any other provision of law, private operators may construct, improve, rehabilitate, own, lease, manage, and operate fee-based facilities subject to the terms of this Act. Private operators may mortgage, grant security interests in, and pledge their interests in, for a period not to exceed the length of the development agreement:

1. Fee-based facilities and their components;

2. Development, leases and concessions, and other related agreements; and

3. Income, profits, and proceeds of the fee-based facility.

SECTION 3. Public authority may enter into development agreement. A public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator.

SECTION 4. Contents of development agreements. A development agreement for a fee-based facility entered into pursuant to this Act may provide for private ownership of the facility without reversion of title; for operating the facility under lease or management contract; for build, operate, and transfer facilities or build, transfer, and operate facilities; or any other form of ownership or operation considered advisable by the public authority. A development agreement may permit the private operator to:

1. Assemble funds from any available source, including federal, state, and local grants, bond revenues, contributions, and pledges; and

2. Incorporate related improvements into the fee-based facility, subject to requirements of state and federal law.

A development agreement may also include grants of title, easements, rights of way, and leasehold estates that are necessary to the fee-based facility. In addition, a development agreement may authorize the private operator to charge variable-rate fees based on time of day, characteristics of services, or other factors and measurement methods considered significant by the public authority for the particular facility.

SECTION 5. Right-of-way acquisition. Private operators may acquire right of way and property by donation, lease, or purchase. When necessary for the construction, alteration, addition, extension, or improvement of any project under this Act, a public authority may acquire any real or personal property by the law of eminent domain of this state and may lease the property or right of way to a private operator.

SECTION 6. Lease term. A lease for public facilities must be for terms of no more than fifty years and must be reviewed and may be revised every five years.

SECTION 7. Application of other law. This Act does not excuse private operators of fee-based facilities from the necessity of obtaining environmental, navigational, design, or safety approvals that would be required if the facility were constructed or operated by a public body.

SECTION 8. Public authority may facilitate projects.

1. A public authority may exercise any power possessed by it with respect to the development and construction of infrastructure projects to facilitate the development and construction of infrastructure projects under this Act.

2. A public authority may provide services for which it is reimbursed with respect to preliminary planning, planning, environmental certification, and preliminary design of infrastructure projects.

SECTION 9. Development agreements - Mandatory provisions.

A development agreement must require:

1. That the plans and specifications for the fee-based facility satisfy the public authority's standards of construction for infrastructure of the same functional classification;

2. For fee-based facilities to be incorporated into the existing infrastructure, that any applicable department or authority review and approve the facility to the same extent as it would for a similar publicly constructed facility;

3. That, after public notice, the private operator manage and operate a fee-based facility in cooperation with the applicable public authority and subject to any bylaws that the public authority and the private operator may from time to time mutually agree upon;

4. That the fee-based facility be subject to regular safety inspections by the applicable public authority;

5. That the anticipated fees, rental income, and revenues from the operation of the facility, or other sources of funding, or any combination thereof, be sufficient to pay the maintenance and operation costs for the facility, and principal of and interest on any evidence of indebtedness to finance the facility; and

6. Any other provisions negotiated by the parties.

SECTION 10. Cost recovery. Development agreements entered into under this Act may authorize private operators of fee-based facilities to impose a fee-based charge for the use of the facility and must require that the fee revenues be applied:

1. To repayment of indebtedness incurred for the fee-based facility;

2. To lease or fee-based concessions payments, if any;

3. To costs associated with the operation, administration, and maintenance of the facility; and

4. To reasonable reserves for future capital outlays, if any.

Residual fee revenues belong to the private operator, except for any royalties that may be payable to a public authority under the development agreement or a related fee-based concession agreement. After the expiration of any lease for a build, transfer, and operate facility, or after title has reverted for a build, operate, and transfer facility, the public authority may continue to charge a fee for the use of the facility.

SECTION 11. Joint authority. When a fee-based facility is or will be situated in the jurisdiction of more than one public authority, or is or will be an interstate or international facility, the applicable authorities concerned may enter into a compact to delegate to one or more of the authorities or a board appointed by the various authorities the authority to exercise all of the powers, duties, and functions of the other authorities regarding the fee-based facility, including the authority to negotiate and administer the development agreement and any related lease and fee-based concession agreement. In addition, if all public authorities having jurisdiction over a fee-based facility concur, title to or authority over the facility may be tendered to the agreed upon authority of choice, which may at its option accept the title of authority to administer pursuant to the development agreement and this section.

SECTION 12. Property tax exemptions - Exemptions from bidding requirements.

1. If approved by the governing body of the city, for property within city limits, or by the governing body of the county, for property outside city limits, new fee-based facilities are exempt from all ad valorem taxes.

2. For portions of the project that do not involve contractor ownership, the construction, improvement, rehabilitation, operation, and management of fee-based facilities by private operators under this Act are subject to all competitive bidding and procurement requirements otherwise applicable under state and local laws, rules, and ordinances, if so determined by resolution of the governing body of the public authority.

SECTION 13. Relation to other law. The rights, powers, and authority conferred by this Act are in addition to other rights, powers, or authority private operators and public authorities may have under other law. This Act does not supersede or repeal, expressly or by implication, any other law permitting the construction, improvement, rehabilitation, ownership, and operation of fee-based facilities by private operators.

Approved March 26, 1993
Filed March 26, 1993

CHAPTER 460

HOUSE BILL NO. 1358
(Representatives St. Aubyn, Dorso, Bodine)
(Senators Dotzenrod, W. Stenehjem, Yockim)

GUARANTEED ENERGY SAVINGS CONTRACT DURATION

AN ACT to amend and reenact section 48-05-11 of the North Dakota Century Code, relating to guaranteed energy savings contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-05-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-05-11. Guaranteed energy savings contracts. The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 48-05-10, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding ten years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost savings will meet or exceed the costs of the system. A qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract. The guaranteed energy savings contract may provide for payments over a period not exceeding ~~five~~ ten years.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 461

HOUSE BILL NO. 1307
(Representatives J. Berg, Allmaras, Hagle, Jacobs)
(Senators Nalewaja, Scherber)

COUNTY BUILDING LEASES

AN ACT to amend and reenact section 48-08-07 of the North Dakota Century Code, relating to the length of time a county may enter a lease of a public building.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-08-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-08-07. Lease of public buildings - Terms. No lease of any public building or part of any public building under the provisions of section 48-08-06 shall be for a longer term than two years, except as may be otherwise provided by city ordinance or by resolution of the board of county commissioners. Such lease shall be to a responsible party offering the highest return to the ~~municipality~~ political subdivision and the use or occupation of the building shall not interfere with the use of such building for public purposes. The governing body may reserve the right to reject any and all bids.

Approved April 1, 1993
Filed April 2, 1993

PUBLIC UTILITIES

CHAPTER 462

SENATE BILL NO. 2317
(Senators Redlin, Krauter, Nething)
(Representatives Gates, Hokana, Mahoney)

TELECOMMUNICATIONS REGULATION

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter ~~shall authorize~~ or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, ~~except a telecommunications utility,~~ that is not operated for profit, ~~but all other provisions herein shall apply to such utilities. The rates for local exchange telecommunications service of any nonprofit telecommunications company or telecommunications company having less than three thousand subscribers, upon a vote of the company's owners or board of directors, shall not be subject to the jurisdiction of the commission~~ that is operated as a nonprofit, cooperative or mutual telecommunications company or is a telecommunications company having fewer than three thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative or mutual telecommunications company or has fewer than three thousand local exchange subscribers is subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 7 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 463

HOUSE BILL NO. 1131
(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

PSC ORDERS WITHOUT HEARING

AN ACT to amend and reenact subsection 5 of section 49-02-02 of the North Dakota Century Code, relating to public service commission orders that may be issued without hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 49-02-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Hold hearings on good cause being shown therefor or on its own motion, and to provide notice thereof and to shorten the period for which notice shall be given prior to hearing, when good cause exists for such action. Such notice, however, shall be reasonable in view of the nature, scope, and importance of the hearing. Whenever it shall appear to the satisfaction of the commission that all of the interested parties have agreed concerning the matter at hand, or that no interested party has asked for a hearing, the commission may issue its order without a hearing.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 464

SENATE BILL NO. 2513
(Senators Goetz, Keller, Langley)
(Representatives Dorso, Mahoney, Tollefson)

PUBLIC UTILITY PROPERTY VALUATION

AN ACT to amend and reenact section 49-06-02 of the North Dakota Century Code, relating to valuation of public utility property for ratemaking purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-06-02 of the North Dakota Century Code is amended and reenacted as follows:

49-06-02. Value of property for ratemaking purposes - Determination. The value of the property of a public utility, as determined by the ~~public service~~ commission for ratemaking purposes, ~~shall be~~ is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including a reasonable rate of return on capital expenditures; and

2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 465

HOUSE BILL NO. 1132
(Transportation Committee)
(At the request of the Public Service Commission)

RAILROAD SAFETY RULES

AN ACT to amend and reenact section 49-10.1-14 of the North Dakota Century Code, relating to the public service commission's jurisdiction to prescribe and enforce safety rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-10.1-14 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-14. Commission ~~to prescribe~~ may adopt **and enforce safety rules ~~and regulations~~.** The commission, for the protection of persons and property, ~~shall promulgate, establish,~~ may adopt~~, in whole or in part,~~ and enforce~~,~~ railroad safety rules ~~and regulations~~ not inconsistent with any federal agency having jurisdiction over railroads~~, by reference or otherwise, as now prescribed or which may from time to time be prescribed~~. The commission may adopt rules ~~and regulations~~ more stringent than ~~applicable~~ federal rules ~~and regulations~~ when necessary to eliminate an essentially state or local safety hazard if ~~said~~ the rules ~~or regulations~~ are not incompatible with any federal law~~,~~ or rule~~, or regulation~~ and do not create an undue burden on interstate commerce.

Approved March 12, 1993
Filed March 12, 1993

CHAPTER 466

SENATE BILL NO. 2397
(Senator Mutch)
(Representative Timm)

COMMON MOTOR CARRIER REGULATION

AN ACT to amend and reenact sections 49-18-08, 49-18-12, 49-18-14, 49-18-32, and 49-18-41 of the North Dakota Century Code, relating to the regulation of common motor carriers by the public service commission; to repeal section 49-18-40 of the North Dakota Century Code, relating to the transfer of commercial freighting truck license tags; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-18-08. Regulation of common motor carriers by commission. The commission shall ~~supervise and~~ regulate all common motor carriers of property or passengers and shall:

1. Fix, alter, regulate, and determine just, fair, reasonable, and sufficient rates, fares, charges, and classifications;
2. Regulate the facilities, accounts, and service~~, and safety~~ of the operations of each ~~such~~ carrier;
3. Regulate operating schedules to meet the needs of any community ~~and~~ to ensure adequate transportation service to the territory served by ~~such~~ the carrier;
4. Prevent unfair competition, discrimination, or preferences between common motor carriers;
5. Require the filing of ~~annual and other reports,~~ tariffs and schedules;
6. Supervise and regulate the relations between common motor carriers and the public to comply with the provisions of this chapter; and
7. Adopt rules to enforce the provisions of this chapter.

SECTION 2. AMENDMENT. Section 49-18-12 of the North Dakota Century Code is amended and reenacted as follows:

49-18-12. Common motor carrier - Certificate of public convenience - Temporary permit - Application. No common motor carrier shall operate within this state without ~~first~~ having obtained from the commission a certificate of public convenience and necessity. ~~Application therefor shall~~ An application must be ~~made~~ upon forms ~~to be~~ prescribed by the commission. The commission shall ~~make regulations~~ adopt rules for the filing of ~~such~~ the application. The application must contain a financial statement, a list of equipment ~~to be~~ used by the carrier,

a description of the type of service offered, and the route and territory ~~to be~~ served. ~~However, upon~~ Upon receipt of ~~such~~ an application and when there is an immediate and urgent need, the commission ~~shall have the authority to~~ may grant a temporary permit for service by a common motor carrier to a specified point or points or within a specified territory having no carrier service capable of meeting ~~such~~ the need. ~~Such~~ The temporary permit ~~shall~~ must be granted without a hearing and, unless suspended or revoked for good cause, ~~shall be~~ is valid for ~~such~~ a period of time ~~as~~ determined by the commission ~~shall specify,~~ but for not more than ~~an aggregate of~~ one hundred ~~and~~ eighty days, and ~~shall create~~ creates no presumption that the corresponding certificate of public convenience and necessity ~~shall~~ will be granted after the hearing on the application. ~~Such~~ The temporary permit ~~shall be~~ is transferable only after notice to all interested parties and approval by the commission, after opportunity for hearing.

SECTION 3. AMENDMENT. Section 49-18-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-18-14. Factors to be considered by commission in granting certificate. Before granting a certificate to a common motor carrier, the commission shall ~~take into consideration~~ consider:

1. The need for service proposed by the applicant;
2. The effect on other existing transportation facilities;
3. The fitness and ability of applicant to provide service; and
4. ~~Adequacy of proposed service; and~~
5. ~~Such~~ Any other information ~~as~~ the commission ~~may deem~~ determines appropriate.

If the commission finds that the transportation ~~to be~~ authorized by the certificate is not consistent with the public convenience and necessity, the commission ~~shall~~ may not grant ~~such~~ the certificate.

SECTION 4. AMENDMENT. Section 49-18-32 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **49-18-32. Fees - Common or contract motor carrier.** Every common motor carrier and ~~every~~ contract carrier of property or passengers ~~now~~ operating~~, or which hereafter shall operate, as such common or contract carrier~~ in this state, ~~at the time of making application~~ when applying for a certificate of public convenience and necessity or permit, and annually thereafter, on or before ~~April fifteenth~~ January first of each ~~calendar~~ year, shall pay a fee of not less than eighty-five dollars nor more than two hundred fifty dollars, ~~to be~~ as fixed by the commission in each instance. ~~Miscellaneous nonrefundable fees shall be as follows:~~

~~1.~~	~~Application~~ The nonrefundable fee for an application for transfer of a certificate of public	~~$100.00~~

[1] NOTE: Section 49-18-32 was also amended by section 1 of House Bill No. 1185, chapter 468.

convenience and necessity

~~2. Application for the mortgaging of a certificate of public convenience and necessity 10.00~~

~~3. Application for the issuance of a duplicate certificate of public convenience and necessity 5.00~~

~~4. Copy of all records of the commission pertaining to auto transportation companies, per one hundred words or portion thereof~~ .50 is one hundred dollars.

SECTION 5. AMENDMENT. Section 49-18-41 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-18-41. Identification ~~tag to be~~ certificate secured by a motor carrier - Temporary identification certificate for certain vehicles.

1. Except as provided in subsection 2, each motor carrier who under the statutes of this state must register with or secure a permit or certificate of public convenience and necessity from the commission, except a common carrier of passengers, at the time of securing ~~such~~ the certificate or permit, and annually thereafter on or before ~~April fifteenth~~ January first of each ~~calendar~~ year, shall secure from the commission an identification ~~tag~~ certificate for each motor vehicle operated within this state~~, which shall be~~ in the form~~, color combination, lettering, and numbering~~ prescribed by the commission. ~~The identification tag for each type of carrier licensed by the commission shall be identified in a manner different from that of each other type of carrier.~~ The commission shall collect a fee of twenty dollars for each identification ~~tag~~ certificate. No motor carrier shall operate in this state without having an identification ~~tag attached to~~ certificate in each vehicle ~~owned and~~ operated by ~~such~~ the carrier. ~~The identification plate shall be secured from the director of the department of transportation upon request from the commission.~~

2. A motor carrier operating a motor vehicle in this state for not more than thirty days a year may secure, in place of the identification ~~tag~~ certificate required under subsection 1, a temporary identification certificate for that motor vehicle from the commission. The fee for the temporary certificate is five dollars. When a motor vehicle is operated under the authority of a certificate issued under this subsection, the operator of the motor vehicle shall carry ~~that~~ the certificate in the motor vehicle while it is operated in this state.

SECTION 6. REPEAL. Section 49-18-40 of the North Dakota Century Code is repealed.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 467

SENATE BILL NO. 2372
(Senator Mutch)
(Representative Timm)

MOTOR CARRIER APPLICATION PROTEST FEE

AN ACT to amend and reenact section 49-18-15 of the North Dakota Century Code, relating to a motor carrier application protest fee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-18-15. Testimony - Issuance of certificate or permit - Conditions. A party opposing an application may offer testimony at an oral hearing if it filed a protest and request for hearing with the commission and the applicant within twenty days of receipt of the notice. The protest must state the objection, the protestant's witnesses, ~~and~~ the time needed to present the protestant's case, and must be accompanied by a fee of fifty dollars. A party supporting an application may offer testimony at the oral hearing. Based upon the evidence, the commission may grant or deny, in whole or in part, the certificate or permit requested.

Approved March 11, 1993
Filed March 11, 1193

CHAPTER 468

HOUSE BILL NO. 1185
(Transportation Committee)
(At the request of the Public Service Commission)

MOTOR CARRIER FEES

AN ACT to amend and reenact section 49-18-32 of the North Dakota Century Code, relating to filing fees for motor carrier applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-32 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **49-18-32. Fees - Common or contract motor carrier.** Every common motor carrier and every contract carrier of property or passengers now operating, or which hereafter shall operate, as such common or contract carrier in this state, at the time of making application for a certificate of public convenience and necessity or permit, and annually thereafter, on or before April fifteenth of each calendar year, shall pay a fee of not less than eighty-five dollars nor more than two hundred fifty dollars, to be fixed by the commission in each instance. ~~Miscellaneous nonrefundable fees shall be as follows:~~

~~1. Application~~ The nonrefundable fee for an application for transfer of a certificate of public convenience and necessity	~~$100.00~~
~~2. Application for the mortgaging of a certificate of public convenience and necessity~~	~~10.00~~
~~3. Application for the issuance of a duplicate certificate of public convenience and necessity~~	~~5.00~~
~~4. Copy of all records of the commission pertaining to auto transportation companies, per one hundred words or portion thereof~~	~~.50~~

is one hundred dollars.

Approved March 19, 1993
Filed March 19, 1993

[1] NOTE: Section 49-18-32 was also amended by section 4 of Senate Bill No. 2397, chapter 466.

CHAPTER 469

SENATE BILL NO. 2440
(Senators Nething, Redlin)
(Representatives Gates, Nelson)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact a new subsection to section 49-21-02.1 and three new sections to chapter 49-21 of the North Dakota Century Code, relating to the regulation of interexchange telecommunications companies, the authority of the public service commission, refunds, and quality of service; and to amend and reenact sections 49-21-01, 49-21-01.1, 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-01.6, 49-21-02.2, 49-21-04, 49-21-06, 49-21-07, 49-21-09, and 49-21-22 of the North Dakota Century Code, relating to the regulation of telecommunications companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll ~~type and private line~~ telecommunications services and private line transport services. "Switched access" includes:

   a. Local exchange central office switching and signaling;

   b. Operator and recording intercept of calls;

   c. Termination of end user lines in the local exchange central office; ~~and~~

   d. The carrier common line charge for the line between the end user's premises and the local exchange central office; and

   e. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.

2. "Essential telecommunications price factor" means ~~the annual change in a company's input cost index reduced by fifty percent of that company's productivity incentive adjustment~~:

   a. In the case of group I telecommunications companies, a factor determined annually as the lower of:

(1) 41.6667 percent of the percentage change of the average annual gross national product price index; or

(2) The percentage change of the average annual gross national product price index minus 2.75 percentage points.

b. In the case of group II telecommunications companies, a factor determined annually as the lower of:

(1) 52.0834 percent of the percentage change of the average annual gross national product price index; or

(2) The percentage change of the average annual gross national product price index minus 2.0625 percentage points.

c. For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.

3. "Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area. A charge based on ~~usage~~ measured service may not be required for residential and business local exchange service. Essential telecommunications services ~~include~~ are limited to:

a. ~~Access~~ Switched access;

b. Any new product or service~~, not existing on~~ offered in North Dakota after July 1, 1989, ~~but~~ deemed essential by the commission after notice and hearing in accordance with chapter 28-32;

c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service;

d. ~~Directory~~ Primary directory listing, including nonlisted and nonpublished service, and local exchange directory assistance;

e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;

f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;

g. ~~Service~~ Installation of the service connection for essential services from the end user's premises to the local exchange network;

h. ~~Telecommunications service provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's telecommunications services; and~~

~~i.~~ Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has direct inward dialing and necessary signaling service such as touchtone used by end users for essential telecommunications services;

i. Single or multiparty flat-rate or measured residence and business service;

j. Single or multiparty flat-rate or measured combination business and residence service; and

k. The transmission service line for a coin or pay telephone.

4. ~~"Input cost index" means a comparison of the cost of all goods and services purchased by a telecommunications company to the cost of the same goods and services in a base year.~~ "Gross national product price index" means the fixed-weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. "Average annual gross national product price index" means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.

5. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.

6. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.

7. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.

8. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 3 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. Nonessential telecommunications services include, but are not limited to:

a. InterLATA and intraLATA message toll service;

b. Private line transport service;

c. Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;

d. Centrex services and features, not including transmission service described in subdivision h of subsection 3 of this section;

e. Installation of service connections in addition or supplementary to that described in subdivision g of subsection 3 which also provides transmission service between the end user's premises and the local exchange central office switch;

f. Mobile telecommunications services using radio spectrum or cellular technology; and

g. Packet-switched services.

9. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.

~~9. "Productivity incentive adjustment" means a telecommunications company's expected average annual change in productivity. "Productivity" means a measure of a telecommunications company's total output of services and products to the total amount of input of resources used to produce those services and products.~~

10. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.

11. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.

~~10.~~ 12. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

~~11.~~ 13. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

SECTION 2. AMENDMENT. Section 49-21-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.1. Inapplicability of provisions of chapter. Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the

purpose of reselling telecommunications services to its patients or guests.

3. Telegraph service.

4. Home ~~and~~, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.

5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.

6. Billing and collection services.

7. Inside wire and premise cable installation and maintenance.

8. Directory services which are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages".

SECTION 3. AMENDMENT. Section 49-21-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.2. Exemption - Rate regulation. Except as provided for in this chapter and sections 49-02-01.1, ~~49-02-02, 49-02-04, 49-02-05, 49-02-05.1,~~ 49-02-21, 49-02-22, ~~and~~ 49-04-02.1, and 49-04-05, telecommunications companies and all telecommunications services are exempt from the provisions of ~~chapter 49-02 and from the provisions of section 49-02-02 and~~ chapters 49-02, 49-04, 49-05, and 49-06 ~~which concern rates~~. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may ~~inform the commission, in writing, that it does not want~~ elect not to be subject to the provisions of this section and section 49-21-01.3, and ~~that it wants~~ to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over fifty thousand ~~end users~~ subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable ~~decision~~ election.

SECTION 4. AMENDMENT. Section 49-21-01.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures ~~for essential services~~ must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.

2. The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. ~~The commission shall set a company's price factor to be effective January 1, 1990, and annually thereafter.~~ The commission shall publish the essential

telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four calendar quarters ending with the second calendar quarter of the preceding calendar year. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection. A discounted price for an essential telecommunications service is not the price of a service for purposes of this section. Discontinuing or altering any discount price for an essential telecommunications service is not a price change as regulated by this subsection.

3. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.

4. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:

   a. Price increases may be accumulated up to a percentage total of five percent.

   b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.

   c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.

   d. Accumulated price increases may be implemented at the discretion of the telecommunications company.

   e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

SECTION 5. AMENDMENT. Section 49-21-01.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.4. Purchase of essential telecommunications services. Customers of any telecommunications company must be permitted to purchase essential telecommunications services separate from all other telecommunications services. A telecommunications company may disconnect local exchange or essential telecommunications services only pursuant to rules adopted by the commission.

SECTION 6. AMENDMENT. Section 49-21-01.6 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.6. Call identification services - Charges prohibited - Notice - Exceptions.

1. Any telephone call identification service offered in this state by a telecommunications company or rural telephone cooperative must allow a caller, at least on a per call basis, to withhold, at no cost to the caller, display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller.

2. The telecommunications company or rural telephone cooperative may not charge any caller who requests that that person's telephone number be withheld from the recipient of any call placed by the caller.

3. A telecommunications company or rural telephone cooperative offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered. In the case of a telecommunications company or rural telephone cooperative presently offering a call identification service, notice must be given within thirty days of July 17, 1991.

4. This ~~chapter~~ section does not apply to:

   a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.

   b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).

   c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.

   d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service, or any voice or data store and forward service.

   e. Any other service that, after investigation by the commission, the commission finds that a nondisclosure or similar agreement will protect the privacy interests of a calling party.

SECTION 7. A new subsection to section 49-21-02.1 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provisions of this section, telecommunications companies which provide only nonessential services are subject to the same level of commission regulation, oversight, and monitoring.

SECTION 8. AMENDMENT. Section 49-21-02.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-02.2. Cross-subsidization prohibited. Revenues obtained from regulated telecommunications services, including essential and nonessential telecommunications services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated services, and revenues

from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated telecommunications service or a nonessential telecommunications service must cover the cost of providing that service.

SECTION 9. AMENDMENT. Section 49-21-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state; ~~and~~

2. All rules and regulations which in any manner affect the prices charged or to be charged for such service; and

3. All new prices and any price changes of essential services at least sixty days before the effective date of the new price or price change, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter. Each filing under this section must be accompanied by a fifty-dollar filing fee.

SECTION 10. AMENDMENT. Section 49-21-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-06. Complaint against prices. There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any person may ~~make complaint~~ complain to the commission, or the commission on its own motion may complain and begin investigation, of the ~~unreasonableness or inadequacy~~ reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be ~~conducted~~ provided in accordance with ~~section 49-05-03~~ chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines~~, after notice and hearing,~~ to be unreasonable, unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications, provided this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is

unreasonably high. ~~Other complaints are subject to the commission's authority pursuant to section 49-05-01.~~

SECTION 11. AMENDMENT. Section 49-21-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. ~~So long as the price for access service is subject to the provisions of subsection 2 of section 49-21-01.3, a~~ A telecommunications company, including a telecommunications company exempt from one or more provisions of title 49 under section 49-21-02.1 providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll ~~type~~ and private line services shall cover in its price for message toll ~~type~~ and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from passing through any state, municipal or local taxes to the specific geographic areas from which the taxes originate; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

SECTION 12. AMENDMENT. Section 49-21-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-09. Telecommunications - Connections. Whenever ~~the commission shall find that~~ a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and ~~that~~ public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies, as provided in this section. When, after notice and hearing in accordance with chapter 28-32, the commission finds that public convenience and necessity require the use by one telecommunications company of facilities or services of another telecommunications company, and that such use will not result in irreparable injury to the owner or other users of such facilities or services, nor any substantial detriment to the facilities or services, and that such telecommunications companies have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation, terms, and conditions. If such use is directed, the telecommunications company to which the use is permitted is liable to the owner or other users of such facilities or services for such damage as may result therefrom to the property of such owner or other users thereof.

SECTION 13. AMENDMENT. Section 49-21-22 of the 1991 Supplement to the North Dakota Century Code as amended by section 1 of Senate Bill No. 2393, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

49-21-22. Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1993 and 1999 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1994, 1996, and 1998. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and of the public service commission staff providing technical assistance while carrying out their duties.

SECTION 14. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Powers in general. The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.

2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.

3. Require copies of reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.

4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.

5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.

6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and

order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. All amounts collected by the commission under this subsection must be deposited in the general fund of the state treasury.

SECTION 15. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Excessive charges - Refunds. When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or reparations, with interest from the date of collection.

SECTION 16. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Quality of service - Procedure and remedies. Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 470

SENATE BILL NO. 2385
(Senators Schoenwald, Goetz)
(Representatives Kretschmar, Mahoney)

INTRALATA DIALING PARITY

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to the provisioning of dialing parity in the North Dakota intraLATA long distance market; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Universal telephone service - Dialing parity - IntraLATA equal access. In order to continue to make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost, the provisioning of dialing parity on an intraLATA basis, otherwise known as 1+ intraLATA equal access, may not be required to be provided by any company providing local exchange service.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 1999, and after that date is ineffective.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 471

SENATE BILL NO. 2393
(Senators Nething, Redlin)
(Representatives Gates, Nelson)

REGULATORY REFORM REVIEW COMMISSION

AN ACT to amend and reenact section 49-21-22 of the North Dakota Century Code, relating to the regulatory reform review commission and compensation of the members of the commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-22 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-22. Regulatory reform review commission - Appointments - Compensation **- Report to legislative council.** The regulatory reform review commission shall review the operation and effect of ~~subsection 2 of section 49-02-01, section 49-21-01, subsection 6 of section 49-21-01.1, sections 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22~~ North Dakota telecommunications law on an ongoing basis during the interims between the ~~1989, 1991, 1993, and 1995~~ 1993 and 1999 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in ~~1990, 1992, and 1994~~ 1996 and 1998. The regulatory reform review commission consists of ~~the members~~ one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public commission serving on the regulatory reform review commission and of the public service commission staff providing technical assistance while carrying out ~~its~~ their duties ~~under subsection 2 of section 49-02-01, section 49-21-01, subsection 6 of section 49-21-01.1, sections 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22 including expenses incurred for holding meetings and preparing reports shall, upon the order of the public service commission, be paid by the telecommunications companies affected by subsection 2 of section 49-02-01, section 49-21-01, subsection 6 of section 49-21-01.1, sections 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22 in the manner provided in section 49-02-02~~.

Approved March 24, 1993
Filed March 25, 1993

PUBLIC WELFARE

CHAPTER 472

HOUSE BILL NO. 1179
(Human Services Committee)
(At the request of the Department of Human Services)

CHILD AND ADULT FOSTER CARE

AN ACT to create and enact a new subsection to section 50-06-05.1, sections 50-11-01.4, 50-11-02.2, 50-11-03.2, 50-11-04.1, 50-11-04.2, 50-11-04.3, 50-11-04.4, 50-11-04.5, 50-11-04.6, and 50-11-04.7 of the North Dakota Century Code, relating to transitional living services and licensure of foster care facilities for children and adults; to amend and reenact sections 50-11-00.1, 50-11-01, 50-11-02, 50-11-02.1, 50-11-03, 50-11-04, 50-11-05, 50-11-06, 50-11-06.6, 50-11-06.7, 50-11-07, 50-11-08, and 50-11-09 of the North Dakota Century Code, relating to licensure of foster care facilities for children and adults; and to repeal sections 50-11-01.3, 50-11-06.1, 50-11-06.2, 50-11-06.3, 50-11-06.4, and 50-11-06.5 of the North Dakota Century Code, relating to the licensure of foster care facilities for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06-05.1 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To administer, allocate, and distribute any funds made available for the payment of transitional living services, to develop standards and conduct needs assessments regarding transitional living services, to develop or approve and to evaluate demonstration projects offering transitional living programs, to approve transitional living facilities for the purpose of providing foster care, and to apply for and administer federal and other funds that may be made available to undertake any of the activities described in this subsection. For purposes of this subsection:

a. "Transitional living facility" means a specific site, identified by a licensed child-placing agency and approved by the department, for the provision of transitional living services.

b. "Transitional living program" means a program that provides transitional living services, and may include an identifed program operations location approved by the department.

c. "Transitional living services" may include housing, supervision, and supportive services intended and designed to assist persons who have received foster care services and who have reached age seventeen, but who have not reached age twenty-one, to achieve independence and self-sufficiency.

SECTION 2. AMENDMENT. Section 50-11-00.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-00.1. Definitions. As used in this chapter:

1. ~~"Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a foster family home, group home, or residential child care facility.~~ "Department" means the department of human services.

2. "Facility" means a family foster home for adults, family foster home for children, group home, or residential child care facility for children.

3. "Family foster home for adults" means an occupied private residence in which foster care for adults is regularly provided by the owner or lessee thereof, to four or fewer adults who are not related by blood or marriage to the owner or lessee, for hire or compensation.

~~2.~~ 4. "~~Foster family~~ Family foster home for children" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee thereof to no more than four children, unless all the children in foster care are related to each other by blood or marriage, in which case such limitation does not apply.

5. "Foster care for adults" means the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour per day basis, in the home of a caregiver, to a person age eighteen or older, who is unable, neglects, or refuses to provide for the person's own care.

6. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family. Foster care may be provided in a family foster home, group home, or residential child care facility.

~~3.~~ 7. "Group home" means ~~an occupied private~~ a residence in which foster care is regularly provided for more than four, but less than ten, unrelated children.

~~4.~~ 8. "Residential child care facility" means a facility other than an occupied private residence providing foster care to more than eight unrelated children, except as may be otherwise provided by rule or regulation.

SECTION 3. AMENDMENT. Section 50-11-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **50-11-01. Foster care for children - License required.** ~~Any person, partnership, voluntary association, or corporation owning or operating a foster family home, group home, or residential child care facility receiving for~~ No person may furnish foster care ~~one or more~~ for children for more than thirty days during ~~the~~ a calendar year ~~shall procure annually~~ without first procuring a license to do so from the department ~~of human services a license so to do~~. The mandatory provisions of this section requiring licensure do not apply when the care is provided in:

1. The home of a person related to the child by blood or marriage.
2. A home or institution under the management and control of the state or a political subdivision.
3. A home or facility furnishing room and board primarily to accommodate the child's educational or vocational needs.

SECTION 4. Section 50-11-01.4 of the North Dakota Century Code is created and enacted as follows:

50-11-01.4. Foster care for adults - License required. A person may not furnish foster care for adults for more than one adult, or for more than two adults who are related to each other, without first procuring a license to do so from the department.

SECTION 5. AMENDMENT. Section 50-11-02 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02. License granted - Term. A license for the operation of a ~~home or institution~~ facility receiving ~~children~~ persons for foster care must be granted, for a period of not more than two years, by the department ~~of human services~~ to reputable and responsible persons upon showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all ~~children~~ persons who may be received;
2. The persons in active charge of ~~such home or institution and their assistants~~ the facility are properly qualified to carry on efficiently the duties required of them;
3. The ~~home or institution~~ facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all ~~children~~ persons cared for therein; and
4. The ~~institution or home~~ facility will be maintained according to the standards prescribed for its conduct by the rules ~~and regulations~~ of the department ~~of human services~~.

~~Such license is in force and effect for a period of not more than one year.~~

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[1] NOTE: Section 50-11-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

SECTION 6. AMENDMENT. Section 50-11-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the department ~~of human services~~ determines that the offense has a direct bearing upon ~~a~~ that person's ability to serve the public as the ~~owner or proprietor~~ operator of a ~~foster family care home or institution for children or adults,~~ facility or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 7. Section 50-11-02.2 of the North Dakota Century Code is created and enacted as follows:

50-11-02.2. Provisional license. At the discretion of the department, a provisional license may be issued to an applicant who, or whose facility, fails to conform in all respects to this chapter and the rules of the department. The department may set conditions under which a provisional license may be issued, and may issue such a license for any period of time, not to exceed two years, as the department may deem reasonable or appropriate to the circumstances of the case. The department may not be compelled to issue a provisional license.

SECTION 8. AMENDMENT. Section 50-11-03 of the North Dakota Century Code is amended and reenacted as follows:

50-11-03. Department to make rules ~~and regulations - Children registered~~ - Records kept by facility. ~~The department of human services may prescribe forms for the registration and~~ A record of all children and adults cared for in any ~~home or institution~~ facility licensed under this chapter must be maintained at the facility in the manner and form prescribed by the department. The department shall establish reasonable minimum standards, and shall make such reasonable rules ~~and regulations~~ for the conduct of such place as are necessary to carry out the purposes of this chapter.

SECTION 9. Section 50-11-03.2 of the North Dakota Century Code is created and enacted as follows:

50-11-03.2. Use of public funds. Public funds for the purchase of foster care for children or adults may be used only in facilities licensed or approved by the department. No person acting on behalf of any state, county, or local governmental entity may arrange for or promote care provided in a facility that does not have a license issued by the department. This section does not apply to any home or institution under the management and control of the state.

SECTION 10. AMENDMENT. Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

[2] **50-11-04. Inspection by the department** - Inspection and report by county social service board. The department ~~of human services~~ and its authorized agents at any time may inspect any ~~home or institution~~ facility licensed under the

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[2] NOTE: Section 50-11-04 was also amended by section 3 of Senate Bill No. 2048, chapter 479.

provisions of this chapter or with respect to which a license application has been made. The department and its agents shall have full and free access to every part of ~~such home or institution~~ the facility. The department may require, on a case-by-case basis, prior to or after licensure, that a facility undergo a fire inspection, inspection of the heating system or the electrical system, or any other type of inspection that the department deems necessary to carry out the purposes of this chapter. All records of the ~~home or institution~~ facility must be open for the inspection of the department or its agents and they may see and interview all children and adults cared for therein. Upon the request of the department, the county social service board of the county in which the facility is located shall inspect any facility for which a license is applied or issued, and shall report the results of the inspection to the department.

SECTION 11. Section 50-11-04.1 of the North Dakota Century Code is created and enacted as follows:

50-11-04.1. Notice. After each inspection or reinspection, the department shall mail or deliver any correction order or notice of noncompliance to the facility.

SECTION 12. Section 50-11-04.2 of the North Dakota Century Code is created and enacted as follows:

50-11-04.2. Correction order - Contents. Whenever the department determines that the facility is not in compliance with this chapter, or the rules adopted thereunder, a notice of license denial or revocation or a correction order must be issued to the facility. A correction order must cite the statute or rule violated, state the factual basis of the violation, specify the time allowed for correction, and specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. A correction order may also state a suggested method of correction or require the submission of a corrective action plan by the facility. If a correction order requires the submission of a corrective action plan, it must also specify a date by which the corrective action plan must be submitted. The department shall, by rule, establish a schedule of allowable times for correction of deficiencies.

SECTION 13. Section 50-11-04.3 of the North Dakota Century Code is created and enacted as follows:

50-11-04.3. Reinspections. A facility issued a correction order under section 50-11-04.2 must be inspected at the end of the period allowed for correction. If, upon inspection, it is determined that the facility has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed or sent to the facility. The notice must specify the uncorrected violations and the penalties assessed in accordance with section 50-11-04.5.

SECTION 14. Section 50-11-04.4 of the North Dakota Century Code is created and enacted as follows:

50-11-04.4. Fiscal sanctions. A facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rule. The fiscal sanction must be assessed for each day the facility remains out of compliance after the allowable time for the correction of deficiencies ends and must continue until a

notice of correction is received by the department in accordance with section 50-11-04.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

SECTION 15. Section 50-11-04.5 of the North Dakota Century Code is created and enacted as follows:

50-11-04.5. Accumulation of fiscal sanctions. A facility must promptly provide written notice to the department when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be promptly reinspected. If, upon reinspection, it is determined that the deficiency has not been corrected, the daily assessment of fiscal sanctions must resume and the amount of fiscal sanctions that otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility. The department must mail or deliver a notice of resumption to the facility. Recovery of the resumed fiscal sanction must be stayed if the licensee makes a written request for an administrative hearing in the manner provided for in chapter 28-32, provided that the written request for the hearing is made to the department within ten days after mailing or delivery of the notice of resumption.

SECTION 16. Section 50-11-04.6 of the North Dakota Century Code is created and enacted as follows:

50-11-04.6. Recovery of fiscal sanctions - Hearing. Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the operator makes written request to the department for an administrative hearing within ten days after mailing or delivery of the notice.

SECTION 17. Section 50-11-04.7 of the North Dakota Century Code is created and enacted as follows:

50-11-04.7. Disposition of fiscal sanctions. Any fiscal sanction collected for any violation of this chapter or of rules adopted pursuant to this chapter must be paid into the state treasury for the general fund after the costs of recovering the fiscal sanction are deducted therefrom.

SECTION 18. AMENDMENT. Section 50-11-05 of the North Dakota Century Code is amended and reenacted as follows:

50-11-05. Contents of records not disclosed - Exception. ~~No agent of the department of human services may disclose the contents of the~~ The records of ~~homes or institutions~~ facilities licensed under ~~the provisions of~~ this chapter ~~or of reports which may be received therefrom, except~~, pertaining to the children or adults receiving care, are confidential and may be made available:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies; or
3. To persons ~~having~~ who have a definite interest in the well-being of the ~~child~~ adults or children concerned ~~and~~, who are in a position to serve

their interests ~~should that be necessary~~, and who need to know the contents of the records in order to assure their well-being and interests.

SECTION 19. AMENDMENT. Section 50-11-06 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06. ~~Foster family care home~~ Facility not to hold itself out as having authority to dispose of child by adoption unless licensed. No ~~licensee under the provisions of~~ facility licensed under this chapter may ~~hold himself~~ be held out as having authority to dispose of any child, ~~nor may he~~ advertise ~~that he will give~~ children for adoption, or ~~hold himself~~ be held out directly or indirectly, as being able to dispose of children, ~~unless he has been~~ without first being licensed so to do ~~expressly by the department of human services, according to law~~ under chapter 50-12.

SECTION 20. AMENDMENT. Section 50-11-06.6 of the North Dakota Century Code is amended and reenacted as follows:

[3] **50-11-06.6. Department to furnish information when requested.**

1. ~~It is the duty of the department of human services whenever called upon~~ Whenever requested by any person, organization, or corporation interested in establishing ~~such~~ a foster ~~family~~ care ~~home~~ facility for children or adults ~~to~~, the department shall furnish information concerning the minimum requirements for ~~such home~~ a facility, and concerning the need for ~~such foster family care home for children or adults~~ a facility in any given community.

2. Any person, organization, or corporation is entitled, upon request, to be advised by the department or county social service boards regarding the policy, procedure, and intentions of the department or county social service boards toward placement of children in that person's, organization's, or corporation's facility if:

   a. The person, organization, or corporation is licensed to provide foster care for children under this chapter and has not received a placement for twelve months or more; or

   b. The person, organization, or corporation is applying for ~~or renewing~~ its license to provide foster care for children under this chapter.

SECTION 21. AMENDMENT. Section 50-11-06.7 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.7. License approval or denial - Time requirements. Except as otherwise provided in this section, an application to the department for a license required by this chapter to provide foster care to adults or children must be approved or denied within sixty days of its receipt by the department ~~of human services~~. The department has an additional forty-five days to grant or deny ~~an~~

[3] NOTE: Section 50-11-06.6 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

~~initial~~ a license required by this chapter if the department notifies the applicant that the additional time is necessary.

SECTION 22. AMENDMENT. Section 50-11-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11-07. Revocation of license. The department ~~of human services~~ may revoke the license of any ~~foster family care home or institution for children or adults~~ facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license no longer exist.
2. The license was issued upon fraudulent or untrue representations.
3. The ~~owner or proprietor of such home or institution~~ operator or an agent of the facility has violated a provision of this chapter or any of the rules ~~and regulations~~ of the department.
4. The ~~owner or proprietor of such home or institution~~ operator of the facility, or a caregiver in the facility, has been ~~guilty~~ convicted of an offense determined by the department to have a direct bearing upon ~~a~~ the person's ability to serve the public~~,~~ or residents of the ~~home, as an owner or proprietor~~ facility, or the department determines, following conviction of any other offense, ~~that an owner or proprietor~~ the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 23. AMENDMENT. Section 50-11-08 of the North Dakota Century Code is amended and reenacted as follows:

50-11-08. Denial or revocation of license - Hearing - Appeals. Before any application for a license under the provisions of this chapter is denied, or before revocation of any such license takes place, written charges as to the specific reasons therefor, a copy of the statutes and department rules authorizing such action, and notice of the applicant's or licensee's right to a hearing on the matter before the department must be served upon the applicant or licensee. The applicant or licensee must also be notified in writing of his or her right to be represented at such hearing by counsel, to examine all files and documents in the custody of the department regarding the applicant or licensee, to present witnesses at the hearing on behalf of the applicant or licensee and to present documentary evidence, to present testimony and cross-examine adverse witnesses, and the right to an impartial hearing officer. The applicant or licensee has the right to a hearing before the department ~~of human services~~ if the hearing is requested within twenty days after service of the written charges. The department shall hold the hearing within sixty days after the hearing request unless the applicant or licensee agrees to a later date. At any such hearing, the evidence submitted by the department in support of its denial or revocation of the applicant's or licensee's license must be limited to supporting only those reasons which were given by the department in its original notice of denial or revocation to the applicant or licensee. An applicant or licensee may appeal under the provisions of chapter 28-32 any final decision of the department regarding the application for or issuance ~~or renewal~~ of a license required by this chapter.

SECTION 24. AMENDMENT. Section 50-11-09 of the North Dakota Century Code is amended and reenacted as follows:

50-11-09. Appeal from decision of department denying or revoking license. The applicant for a license to operate a ~~foster family care home for children or adults or institution receiving children or adults and~~ facility or a person ~~holding such license~~ whose license for a facility has been revoked may appeal the denial or revocation to the district court ~~from any decision of the department of human services denying an application or revoking a license~~. An appeal ~~shall~~ must be taken in the manner provided in chapter 28-32.

SECTION 25. REPEAL. Sections 50-11-01.3, 50-11-06.1, 50-11-06.2, 50-11-06.3, 50-11-06.4, and 50-11-06.5 of the North Dakota Century Code are repealed.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 473

SENATE BILL NO. 2026
(Legislative Council)
(Interim Budget Committee on Government Services)

DAY CARE PROPERTY LEASE FROM STATE

AN ACT to amend and reenact section 50-06-06.6 of the North Dakota Century Code, relating to leases of real and personal property by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-06.6 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-06.6. Department of human services may lease real and personal property. The executive director of the department of human services ~~is authorized to~~ may lease surplus farm and pasture land at the state hospital and the developmental center~~, and to lease space in a building at the developmental center for a child care center~~. The executive director ~~is~~ also ~~authorized to~~ may enter into further leases of real or personal property at the developmental center or the state hospital upon a specific finding that the granting of each such leasehold interest, except those relating to child care services, will result in a net economic gain for the department, taking into account all identifiable costs. Any lease of space for the purpose of providing child care services must meet requirements as determined by the department. The executive director may prescribe the terms and conditions of any leases entered into pursuant to this section and may renew existing leases. Any lease entered into must be subject to renewal or cancelable each biennium. Any lease or lease renewal of unneeded building or building space may be made only after consultation with the administrator of the state fire and tornado fund.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 474

SENATE BILL NO. 2028
(Legislative Council)
(Interim Budget Committee on Government Services)

CHILD CARE PROVIDER REIMBURSEMENT

AN ACT to provide for child care provider reimbursements; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Child care provider reimbursement payments. Within the limits of federal regulations, the department of human services shall directly reimburse early childhood facilities monthly under child care assistance programs administered by the department.

SECTION 2. Child care provider reimbursement system. Within the limits of federal regulations, the department of human services may generate state matching funds for federal child care assistance programs by withholding monthly from a child care provider's reimbursement payment under child care assistance programs administered by the department, an amount not to exceed fourteen dollars for each child for whom at least a portion of the child care services costs are paid by the department. The amounts withheld must be deposited into the department's operating fund and may be used only to match federal funds for child care assistance programs administered by the department. The department may also obtain state matching funds from other available sources. This section is effective only when child care provider reimbursement payments made to child care providers pursuant to this section are at least fourteen dollars per month more than the reimbursement payments would be without the provisions of this section.

SECTION 3. APPROPRIATION. There is hereby appropriated from special funds, derived from federal funds and other funds arising pursuant to section 2 of this Act, and other income, the sum of $2,719,707, or so much of the sum as may be necessary, to the department of human services for the purpose of providing child care assistance payments for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 20, 1993
Filed April 20, 1993

CHAPTER 475

SENATE BILL NO. 2473
(Senators Mathern, Lindgren, Redlin, Robinson)
(Representative Pyle)

TRAUMATIC BRAIN INJURY SERVICES

AN ACT to provide services for persons with traumatic brain injury; and to provide a continuing appropriation subject to budget section approval.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 4 of this Act:

1. "Department" means the department of human services.
2. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial disability or impairment, including open and closed head injuries that may result in mild, moderate, or severe impairments in one or more areas including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perceptual and motor abilities, psychosocial behavior, physical functioning, information processing and speech. The term does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma, but may include brain injuries caused by anoxia and other related causes.

SECTION 2. Department to be lead agency - Cooperation of other agencies. The department shall act as lead agency in the state for the purpose of coordinating services to persons with traumatic brain injury. State agencies and political subdivision agencies shall cooperate with the department to permit the department to efficiently coordinate services to persons with traumatic brain injury while avoiding duplication of services. Neither sections 1 through 4 of this Act, nor any activity undertaken by the department under sections 1 through 4 of this Act, may be construed as creating a right to any benefit or service not specifically required to be granted as a condition of the receipt of grants of federal funds.

SECTION 3. Department may submit plans - Seek waivers. The department may submit state plans and amendments to state plans, concerning programs administered under title 50, to carry out sections 1 through 4 of this Act. The department may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.

SECTION 4. Authority to accept and expend grants, gifts, and services - Continuing appropriation - Budget section approval. The department may apply for and accept any funds, grants, gifts, or services made available for the purpose of providing or coordinating services to persons with traumatic brain injury by any federal agency or department or any private agency or individual. Funds received by the department under this section must be deposited in the state treasury in a special fund designated as the traumatic brain injury fund. There is hereby appropriated out of the traumatic brain injury fund any moneys that may become

available under this section for the purposes of carrying out sections 1 through 4 of this Act. No moneys may be expended from the fund without prior approval of the budget section of the legislative council.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 476

SENATE BILL NO. 2484
(Senators DeMers, Lips, Kelly)
(Representatives Svedjan, Kroeber, Wentz)

INDEPENDENT LIVING SERVICES

AN ACT to authorize the North Dakota independent living council to develop and implement a statewide network of centers for independent living and independent living services for people with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Center for independent living" means a consumer-controlled, community-based, cross-disability, nonresidential, private, nonprofit agency that is designed and operated within a local community by individuals with disabilities, that provides an array of independent living services and programs, and that does not offer permanent housing among its services.

2. "Consumer control" means power and authority vested in individuals with disabilities and, when applied to a center for independent living, means at least fifty-one percent of the principal governing board, management, and staff are individuals with disabilities.

3. "Council" means the statewide independent living council.

4. "Designated state agency" means the vocational rehabilitation division of the department of human services.

5. "Director" means the director of the designated state agency.

6. "Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or being regarded as having a physical or mental impairment that substantially limits one or more of the major life activities.

7. "Independent living core services" means information and referral services, independent living skills training, peer counseling, and individual and systems advocacy.

8. "Independent living services" includes independent living core services and other services and assistance that may include:

   a. Counseling services, including psychological, psychotherapeutic, and related services;

b. Services related to securing housing or shelter;

c. Assistive technology;

d. Interpreter and reader services;

e. Personal assistance services, including attendant care and training of personnel providing those services;

f. Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation and other support services;

g. Services and technical assistance related to the implementation of the federal Americans with Disabilities Act and other related state and federal laws;

h. Activities supporting, assisting, or maintaining life in the community;

i. Transportation, including referral and assistance for transportation;

j. Individual and group community integration activities;

k. Training to develop skills that promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

l. Appropriate preventive services to decrease the needs of individuals assisted under this Act for similar services in the future;

m. Community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and

n. Other services, as may be necessary, not inconsistent with this Act.

SECTION 2. Statewide independent living council. A statewide independent living council is established. The council shall adopt bylaws governing operations of the council. The council shall meet at least quarterly.

SECTION 3. Membership of the council.

1. The governor, or an entity designated by the governor, shall appoint the members of the council, except as provided in subdivision b of subsection 2. The appointing authority shall select members after soliciting recommendations from representatives of consumer-controlled organizations representing a broad range of individuals with disabilities. The council shall select a chairman from among its membership.

2. The council must include:

   a. A majority of individuals with disabilities who are not state employees.

   b. At least fifty percent of the directors of the centers for independent living serving the state or the directors' designated representatives

as chosen by all the directors of centers for independent living serving the state.

c. Ex officio nonvoting members who are a representative from the designated state agency and representatives from other state agencies that provide services to individuals with disabilities.

d. Additional members may be:

(1) Representatives from centers for independent living;

(2) Parents and guardians of individuals with disabilities;

(3) Advocates of and for individuals with disabilities;

(4) Representatives from private businesses;

(5) Representatives from organizations that provide services for individuals with disabilities; and

(6) Other appropriate individuals.

3. The council must be composed of members who provide statewide representation, who represent a broad range of individuals with disabilities, and who are knowledgeable about the independent living philosophy and centers for independent living services and programs.

4. A member of the council may not serve more than two consecutive three-year terms. The two consecutive three-year term limit does not include the term of a member appointed to fill a vacancy occurring before the expiration of the term for which appointed or the reduced terms of service of the members initially appointed to provide for the expiration of terms on a staggered basis as specified by the appointing authority. Any vacancy occurring in the membership of the council must be filled in the same manner as the original appointment. A vacancy does not affect the power of the remaining members to execute the duties of the council.

SECTION 4. Duties of the independent living council. The council shall:

1. Jointly develop and submit, in conjunction with the designated state agency, the state plan as required.

2. Monitor, review, and evaluate the implementation of the state plan.

3. Coordinate activities with councils that address the needs of specific disability populations and issues under other federal and state law.

4. Prepare reports and make recommendations, as necessary, to the governor, legislative assembly, and designated state agency.

SECTION 5. State plan.

1. To be eligible to receive financial assistance, the council and the designated state agency, jointly, shall develop a plan. The plan must provide for review and revision of the plan at least once every three years to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address on a

statewide and comprehensive basis, needs for the state for the development and support of a statewide network of centers for independent living, the provision of statewide independent living services, and working relationships between programs providing independent living services and independent living centers, and the vocational rehabilitation program established under title I of the Rehabilitation Act of 1973, as amended, and any other program providing services to individuals with disabilities.

2. The plan shall:

   a. Specify the objectives to be achieved under the plan and establish timelines for the achievements of those objectives.

   b. Explain how the objectives are consistent with and further the purpose of this Act.

   c. Set forth a strategy for the expansion and enhancement of the statewide network of centers for independent living.

   d. Describe the purpose, extent, and scope of independent living services and programs funded by the state.

   e. Set the priorities for the expenditure of state funds appropriated for the purposes of this Act.

   f. Describe efforts to coordinate federal and state funding for centers for independent living and independent living services and programs.

3. The plan must provide satisfactory assurances that all recipients of financial assistance will:

   a. Notify all individuals seeking or receiving services of the availability of the client assistance program established under section 112 of the Rehabilitation Act of 1973, as amended, the purposes of the services provided under that program, and how to contact that program;

   b. Take affirmative action to employ and advance in employment, qualified individuals with disabilities on the same terms and conditions required with respect to the employment of qualified individuals with disabilities under the provisions of section 503 of the Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act;

   c. Adopt fiscal control and fund accounting procedures necessary to ensure the proper disbursement of and accounting for funds paid by the state under this Act; and

   d. Maintain other records appropriate to facilitate an effective audit.

4. The plan must establish a method for the periodic evaluation of the effectiveness of the plan in meeting the objectives established, including evaluation of satisfaction by individuals with disabilities.

SECTION 6. Independent living centers.

1. Under the direction set forth in the state plan, the director, in cooperation with the council, shall award grants to eligible agencies from funds appropriated for this purpose.

2. The director, with the cooperation of the council, may make a grant under this section to any eligible agency that has the power and authority to carry out the purposes of this Act, that is determined by the director and the council to be able to plan, conduct, administer, and evaluate a center for independent living consistent with the standards and assurances, and that submits an application to the director as required.

3. In the administration of this section, the designated state agency shall award grants to any eligible agency that is receiving funds for this purpose on June 30, 1992, unless the director finds that the agency involved fails to meet program and fiscal standards and assurances.

4. The minimum annual allocation for each center must be established in response to recommendations of the council. Priority for distribution of these funds is as follows:

   a. Centers funded through title VII of the Rehabilitation Act of 1973, as amended, but receiving less than the minimum annual allocation.

   b. New centers for independent living as planned by the council.

   c. Expansion of current centers to serve unserved or underserved areas of the state.

5. If there is no center for independent living serving a region or a region is underserved and funds are sufficient to support an additional center for independent living within the state, the director may award a grant under this section to the most qualified applicant consistent with the state plan and setting forth design of the state for establishing a statewide network of centers for independent living.

SECTION 7. Standards and assurances.

1. Each center for independent living that receives assistance under this Act must comply with the standards set out in subsection 2 to ensure that all programs and activities are planned, conducted, administered, and evaluated in a manner consistent with the purposes of the Act.

2. The standards are:

   a. The center shall promote and practice the independent living philosophy of:

      (1) Consumer control of the center, regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

      (2) Self-help and self-advocacy;

      (3) Development of peer relations and peer role models; and

(4) Equal access of individuals with disabilities to society and to all services, programs, activities, resources, and facilities whether public or private and regardless of the funding source.

b. The center shall provide services to individuals with a range of disabilities. The center shall provide services on a cross-disability basis for individuals with different types of disabilities, including individuals with disabilities who are members of populations that are unserved or underserved. Eligibility for services at any center for independent living may not be based on the presence of any one or more specific disabilities.

c. The center shall facilitate the development and achievement of independent living goals selected by individuals who seek that assistance by the center.

d. The center shall work to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with disabilities.

e. The center shall provide independent living core services and, as appropriate, a combination of any other independent living services.

f. The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with disabilities.

g. The center shall conduct resource development activities to obtain funding from sources other than that available under this Act.

3. The applicant shall provide, as the council may require, satisfactory assurance that:

a. The applicant is an eligible agency.

b. The center will be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a board that is the principal governing body of the center and a majority of that board will be composed of individuals with disabilities.

c. The applicant will comply with the standards set forth in this section.

d. The applicant will establish clear priorities through annual and three-year programs and financial planning objectives for the center, including overall goals or mission for the center, a work plan for achieving the goals or mission, specific objectives, services priorities, and types of services to be provided along with a description that demonstrates how the proposed activities of the applicant are consistent with the most recent three-year state plan.

e. The applicant will use sound organization, personnel assignment practices, including taking affirmative action to employ and advance in employment qualified individuals with disabilities on the same

terms and conditions required with respect to the employment of individuals with disabilities under section 503 of the Rehabilitation Act of 1973, as amended, and the federal Americans with Disabilities Act.

f. The applicant will ensure that the majority of its staff, and individuals on its staff in decisionmaking positions, are individuals with disabilities.

g. The applicant will practice sound fiscal management, including making arrangements for an annual independent fiscal audit.

h. The applicant will conduct annual self-evaluations, prepare an annual report, and maintain records, adequate to measure performance with respect to the standards containing information regarding, at least:

(1) The extent to which the center is in compliance with the standards.

(2) The numbers and types of individuals with disabilities receiving services through the center.

(3) The types of services provided through the center and the number of individuals with disabilities receiving each type of service.

(4) The source and amounts of funding for the operation of the center.

(5) The number of individuals with disabilities who are employed by, and the number who are in management and decisionmaking positions in the center.

(6) The comparison, when appropriate, of the activities of the center in prior years, with the activities of the center in the most recent year.

i. Individuals with severe disabilities who are seeking services from the center will be notified by the center of the existence of the availability of the client assistance program and a way to contact that program.

j. Aggressive outreach, regarding services provided through the center, will be conducted in an effort to reach populations of individuals with disabilities that are unserved or underserved by programs under this Act, especially minority groups and urban and rural populations.

k. Staff at centers for independent living will receive training on how to serve the unserved and underserved populations, including minority groups and urban and rural populations.

l. The center will submit to the council a copy of its approved grant application and the annual audit required under subdivision g.

m. The center will prepare and submit a report to the designated state agency, at the end of each fiscal year, that contains the information described in subdivision h and information regarding the extent to

which the center is in compliance with the standards set forth in subsection 2.

n. Each individual receiving independent living services will have an independent living plan if that individual requests one.

4. Services may be provided under this Act to an individual with a disability regardless of age, to the parents and family of an individual with a disability, and to others in the community.

SECTION 8. Independent living services and programs. From sums appropriated in addition to those allocated for independent living centers, the designated state agency may allocate funds, pursuant to the state plan:

1. To demonstrate ways to expand and improve independent living services.

2. To support the operation of centers for independent living.

3. To support activities to increase the capacities of centers for independent living to develop comprehensive approaches or systems for providing independent living services.

4. To conduct studies and analyses, gather information, develop model policies and procedures, and present information, approaches, strategies, findings, conclusions, and recommendations to policymakers to enhance independent living services for individuals with disabilities.

5. To train individuals with disabilities and individuals providing services to individuals with disabilities and other persons regarding the independent living philosophy.

6. To provide outreach to populations that are unserved or underserved by programs under this Act, including minority groups and urban and rural populations.

Approved March 26, 1993
Filed March 26, 1993

CHAPTER 477

HOUSE BILL NO. 1281
(Representatives Payne, Aarsvold)
(Senators W. Stenehjem, Tallackson)

AFDC WORK INCENTIVE WAIVER

AN ACT relating to a waiver from the federal government to allow employment incentives for recipients of aid to families with dependent children benefits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Department to apply for waiver. The department of human services shall apply for a waiver from the federal government to allow the department to adopt rules to provide an incentive to recipients of aid to families with dependent children benefits to obtain work. Upon receipt of the waiver, the department shall disregard, with no prescribed time limitations, an amount equal to thirty dollars plus one-third of the recipient's earned income, in a manner otherwise consistent with the requirements of 45 CFR 233.20(a)(11), in determining need and amount of assistance in the aid to families with dependent children program.

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

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 478

SENATE BILL NO. 2031
(Legislative Council)
(Interim Budget Committee on Human Services)

CHILD SUPPORT INCENTIVES ACCOUNT

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to the child support incentives account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support incentives account. The child support incentives account is established as a special account in the state treasury. One percent of the total amount of child support incentive payments paid to the state by the office of child support enforcement of the United States department of health and human services must be deposited into the child support incentives account. The state agency, within the limits of legislative appropriation, shall distribute the moneys in the child support incentives account as grants to organizations determined eligible by the state agency for the purpose of providing child support related education of and training for individuals involved in child support enforcement. The state agency, prior to distributing the moneys in the child support incentives account, shall invite comments regarding the distribution of the moneys from representatives of the North Dakota state's attorneys association and regional child support offices and other interested persons.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 479

SENATE BILL NO. 2048
(Legislative Council)
(Interim Special Education Committee)

FOSTER HOMES LICENSING AND INSPECTIONS

AN ACT to create and enact two new sections to chapter 50-11 of the North Dakota Century Code, relating to the licensure of foster care homes; and to amend and reenact section 50-11-04 of the North Dakota Century Code, relating to inspections of foster homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Fire prevention training. Before initial licensure and each renewal under this chapter, each foster parent shall complete a course of instruction related to fire prevention and safety. The state fire marshal shall design the course in cooperation with the department of human services. The course must be available on videotape or any equivalent medium as designed by the department. The department of human services shall offer the course throughout the state.

SECTION 2. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Self-declaration form. The department of human services shall prescribe self-declaration forms to be completed and signed by each foster parent before initial licensure and each renewal under this chapter. The self-declaration forms must include references to smoke detectors, fire extinguishers, fire escape plans, and inspections of appliances, electrical systems, and heating systems.

SECTION 3. AMENDMENT. Section 50-11-04 of the North Dakota Century Code is amended and reenacted as follows:

[1] **50-11-04.** ~~**Inspection by the department**~~ Inspections. The department of human services and its authorized agents at any time may inspect any home or institution licensed under ~~the provisions of~~ this chapter. The department and its agents shall have full and free access to every part of such home or institution. All records of the home or institution must be open for the inspection of the department or its agents and they may see and interview all children and adults cared for therein. The department of human services also may require on a case-by-case basis, before

[1] NOTE: Section 50-11-04 was also amended by section 10 of House Bill No. 1179, chapter 472.

or after licensure, that the foster home undergo a fire inspection, inspection of the heating system, the electrical system, and any other type of inspection that the department determines necessary to carry out the purposes of this chapter.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 480

SENATE BILL NO. 2030
(Legislative Council)
(Interim Budget Committee on Government Services)

CHILD CARE OPERATOR CPR TRAINING

AN ACT to create and enact a new section to chapter 50-11.1 of the North Dakota Century Code, relating to family child care home licensing requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Family child care home operator - Cardiopulmonary resuscitation certification. The operator of a family child care home must be certified in rescuer cardiopulmonary resuscitation by the American heart association or the American red cross or by a similar cardiopulmonary resuscitation training program approved by the department.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1994.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 481

SENATE BILL NO. 2408
(Senators Mathern, Grindberg, O'Connell)
(Representatives J. Berg, Payne, Sveen)

STATE DENTAL INSURANCE PLAN

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the establishment of a state unified dental service insurance coverage plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Department may establish and administer state unified dental insurance coverage plan. The department of human services may establish a state unified dental insurance coverage plan to provide dental service coverage to all persons eligible for medical assistance pursuant to section 50-24.1-02. The department, or a private entity under contract with the department, may administer the plan. Any private entity that contracts with the department under this section must have on its board of directors at least one dentist and one person to whom services are provided under the plan. The plan must provide insurance coverage of the general and usual services rendered and the care administered by licensed dentists. The department may apply for federal funds to administer the plan based on estimates of the medical assistance eligible persons within this state. The department may apply for a waiver to allow the use of medicaid funds to administer the plan and to provide the services determined by the department.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 482

SENATE BILL NO. 2337
(Senator DeMers)
(Representatives Glassheim, Svedjan)

MEDICAL ASSISTANCE EXEMPT ASSETS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to exempt income and resources to determine medical assistance eligibility for the disabled.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Exempt income and resources. The department may not consider, as an available asset for purposes of determining eligibility for benefits under this chapter, income and resources set aside by a blind or disabled person as part of a plan to achieve self-support, if the plan has been approved by the social security administration.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 483

HOUSE BILL NO. 1096
(Human Services Committee)
(At the request of the Department of Human Services)

NURSING HOME RATES

AN ACT to amend and reenact subsections 7, 11, and 16 of section 50-24.4-01 of the North Dakota Century Code, relating to nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7, 11, and 16 of section 50-24.4-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, ~~and~~ uniform allowances, and medical services furnished at nursing home expense.

11. "Nursing home" means a facility, not owned or administered by the state government, described in subsection 3 of section 43-34-01 or a facility owned or administered by the state, which agrees to accept a rate established under this chapter.

16. "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not established by any ~~other third party~~ governmental entity with ratesetting authority, including the veterans' administration or medicare.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 484

HOUSE BILL NO. 1032
(Legislative Council)
(Interim Budget Committee on Long-Term Care)

NURSING HOME PROPERTY REIMBURSEMENT

AN ACT relating to a property cost reimbursement study and property cost reimbursement to certain nursing homes; to provide an appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Property reimbursement study - Reimbursement in certain cases.

1. During the 1993-95 biennium, the department of human services shall continue its study of the medical assistance property cost reimbursement system for the nursing home industry in this state which was initiated under section 1 of chapter 517 of the 1991 Session Laws of North Dakota. The department shall continue the nine-member advisory committee for the study consisting of departmental staff, at least three representatives of the long-term care industry, and three legislative members appointed by the chairman of the legislative council. The department may expend funds to engage a qualified consulting firm to assist in the study and shall continue to report on the progress of the study and any findings to the legislative council or a committee designated by the council. The legislative council shall report any findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-fourth legislative assembly.

2. The department shall reimburse nursing home providers that are vendors in the medical assistance program for the use of real estate and depreciable equipment that was purchased by the nursing home provider after July 1, 1985, and before January 1, 1991, based on property costs created by good faith, arm's length purchase agreements. For purposes of this Act, "property costs" means property taxes including special assessments, lease and rental costs of personal property and reasonable legal expense, all to the extent allowable under chapter 50-24.4 and rules adopted by the department; interest expense allowable under rules adopted by the department without the application of subdivision f of subsection 1 of section 75-02-06-04 of the North Dakota Administrative Code; personal property depreciation based upon purchase price paid by the buyer; and real property depreciation based upon current reproduction cost of those assets depreciated on a straight-line basis over their useful lives to the date of acquisition by the buyer and increased by one-half of the percentage increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of acquisition by the buyer, or the purchase price paid by the buyer, whichever is lower.

SECTION 2. APPROPRIATION. There is hereby appropriated the sum of $60,000, including $30,000, or so much of that amount as may be necessary, out of any moneys in the general fund in the state treasury, not otherwise appropriated, and $30,000, or so much of that amount as may be necessary, from special funds derived from federal funds or other income to the department of human services, for the purpose of defraying the expenses of continuing the study of medical assistance property cost reimbursement for nursing homes for the biennium beginning July 1, 1993, and ending June 30, 1995. The appropriation made available pursuant to this section is limited to the amount of funds unspent as of June 30, 1993, from the appropriation contained in section 2 of chapter 517 of the 1991 Session Laws of North Dakota.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

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

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 485

SENATE BILL NO. 2400
(Senators Keller, Robinson, Tennefos)
(Representatives Clayburgh, Mahoney, Wentz)

NURSING HOME RATES

AN ACT to amend and reenact section 50-24.4-18 of the North Dakota Century Code, relating to establishing deadlines for hearings and decisions concerning nursing home rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.4-18. Appeals.

1. A nursing home dissatisfied with the final rate established may, upon completion of the reconsideration, appeal. An appeal may be perfected by mailing or delivering the information described in subdivisions a through e of this subsection to the department, at such address as the department may designate, mailed or delivered on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including the following information:

   a. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;

   b. A statement of each disputed item and the reason or basis for the dispute;

   c. A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;

   d. The authority in statute or rule upon which the appealing party relies for each disputed item; and

   e. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

2. ~~Repealed by S.L. 1991, ch. 637, § 9, effective July 1, 1991.~~ Upon assignment, the hearing officer shall set and conduct the hearing within one hundred twenty days of the date of assignment.

3. Within sixty days after all evidence has been received, the department shall make its findings of fact and conclusions of law and enter a decision based upon its findings and conclusions.

4. A nursing home may seek a writ of mandamus to compel the hearing officer to timely set and conduct a hearing or to compel the department to timely issue a decision; however, no writ may be granted to a nursing home contributing to the delay.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 486

SENATE BILL NO. 2404
(Senators Keller, Robinson, Tennefos)
(Representatives Bodine, Clayburgh, Wentz)

NURSING HOME RATES AND APPEALS

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to nursing home rates pending reconsideration and appeal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Rates pending reconsideration and appeal.

1. For purposes of this section:

   a. "Final decision rate" means the amount, if any, determined on a per-day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration made under section 50-24.4-17, a request for an administrative appeal under section 50-24.4-18, or a request for judicial appeal under chapter 28-32 taken from a decision on an administrative appeal.

   b. "Pending decision rate" means the amount, determined on a per-day basis, by which a rate otherwise set under this chapter would increase if a nursing home prevails on a request for reconsideration made under section 50-24.4-17, on a request for an administrative appeal under section 50-24.4-18, or on a request for a judicial appeal under chapter 28-32 taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter or through rules adopted under section 50-24.4-02.

2. If a nursing home has made a request for reconsideration under section 50-24.4-17, taken an administrative appeal under section 50-24.4-18, or taken a judicial appeal under chapter 28-32 from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per-day basis, the effect of each of the disputed issues on the nursing home's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

3. The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding section 50-24.4-19, the total must be the rate chargeable to private-paying residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal.

4. The nursing home shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-paying resident from the date the nursing home charges a private-paying resident the pending decision rate.

5. If the pending decision rate paid by a private-paying resident exceeds the final decision rate, the nursing home shall refund the difference, plus interest at the legal rate, within sixty days after the final decision is no longer subject to appeal. If a nursing home fails to provide a timely refund to a living resident or former resident, the nursing home shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the nursing home shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the nursing home may make any disposition of the refund permitted by law. Interest paid under this subsection is a nonallowable cost.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 487

SENATE BILL NO. 2331
(Senators Wogsland, Mathern, Mushik)
(Representatives Aarsvold, A. Olson, Schindler)

NURSING HOME RESIDENT EXTRAORDINARY NEEDS

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to nursing home residents with extraordinary medical needs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Residents with extraordinary needs. The department shall develop criteria identifying extraordinary medical needs so severe as to make it difficult for affected persons to secure necessary care in nursing facilities. The department shall consider those extraordinary medical needs that may be associated with extensive pulmonary disease, specialized rehabilitation, and ventilator dependence. Notwithstanding any other provision of this chapter, the department may determine rates for nursing home residents with extraordinary medical needs. The department shall consider the costs of alternative care or treatment in determining rates for nursing home residents with extraordinary medical needs. A rate so determined by the department is effective for services provided after:

1. The department has agreed that the criteria are met;
2. The facility has agreed to provide necessary services at that rate; and
3. For periods when the person is not eligible for medical assistance, the person, or anyone who may lawfully act on the person's behalf, has agreed to the rate.

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

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 488

SENATE BILL NO. 2116
(Judiciary Committee)
(At the request of the Department of Human Services)

RELIGIOUS BELIEFS HARM TO CHILD

AN ACT to amend and reenact section 50-25.1-05.1 of the North Dakota Century Code, relating to findings of child abuse or neglect in cases involving parental religious beliefs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.1. Determination of probable cause. Upon completion of the investigation of the initial report of child abuse or neglect, a determination must be made that there does or does not exist probable cause to believe that child abuse or neglect is indicated.

1. This determination is the responsibility of:

   a. The state child protection team in all cases of alleged institutional child abuse or neglect; and

   b. In all other cases of alleged abuse or neglect, by the department or the department's designee.

2. Probable cause to believe that child abuse or neglect is indicated may not be determined where the suspected child abuse or neglect arises solely out of conduct involving the legitimate practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering that medical services be provided to the child where the child's life or safety requires it <u>or the child is subject to harm or threatened harm</u>.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 489

SENATE BILL NO. 2308
(Senators W. Stenehjem, Lindgren, Maxson)
(Representatives C. Carlson, Kretschmar, Stenehjem)

CHILD ABUSE OR NEGLECT FINDINGS

AN ACT to amend and reenact section 50-25.1-05.4 of the North Dakota Century Code, relating to rules to resolve complaints of suspected child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-05.4 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.4. Department of human services to adopt rules for review of investigations of probable cause findings. The department of human services shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse or neglect who is aggrieved by the conduct or result of the investigation of a probable cause finding of the suspected child abuse or neglect.

Approved April 12, 1993
Filed April 12, 1993

SALES AND EXCHANGES

CHAPTER 490

HOUSE BILL NO. 1161
(Agriculture Committee)
(At the request of the Public Service Commission)

AUCTION LICENSES, BONDS, AND CONTRACTS

AN ACT to create and enact a new section to chapter 51-05.1 of the North Dakota Century Code, relating to buyer's premiums; and to amend and reenact section 51-05.1-01.1, subdivision h of subsection 1 of section 51-05.1-03, and section 51-05.1-04.1 of the North Dakota Century Code, relating to auctioneers' and clerks' licenses, fees, bonds, and written contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds. Application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is thirty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk.

~~When filing an application an auctioneer or clerk shall file a corporate surety bond of three thousand dollars for an auctioneer and ten thousand dollars for a clerk with the state of North Dakota as obligee~~ Before a license is issued to any auctioneer or auction clerk, the applicant shall file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for an auction clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days written notice to the commission. When a licensee states that it is bonded, the size of the bond must be stated.

SECTION 2. AMENDMENT. Subdivision h of subsection 1 of section 51-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

h. Violated any provisions of this chapter or chapter 41-02, 51-12, or 51-15, or rule or regulation promulgated by the commission.

SECTION 3. AMENDMENT. Section 51-05.1-04.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-05.1-04.1. Written contracts. An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. ~~The contract must identify the property, commission rate, any restrictions on sale,~~

~~whether the auctioneer is authorized to purchase at the sale, and payment of sale expenses and proceeds. The auctioneer shall retain a copy of each contract for two years after the auction.~~ A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. The licensee must retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales where the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. The licensee's name, trade or business name, state license number, business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether or not the licensee is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and phone number.

SECTION 4. A new section to chapter 51-05.1 of the North Dakota Century Code is created and enacted as follows:

Buyer's premium. A successful bidder may not be required to pay an amount in excess of the successful bid and governmental fees and taxes, unless before bidding the bidder has signed a statement which clearly describes the additional amount and states how the actual amount due will be determined.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 491

HOUSE BILL NO. 1150
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial Institutions)

RETAIL INSTALLMENT CONTRACT PREPAYMENT

AN ACT to amend and reenact subdivision a of subsection 1 of section 51-13-05 of the North Dakota Century Code, relating to prepayment of retail installment contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 51-13-05 of the North Dakota Century Code is amended and reenacted as follows:

a. The refund must be at least the finance charge paid in excess of that computed under the ~~actuarial~~ simple interest method, using the annual percentage rate disclosed under federal law to the nearest one-fourth of one percent.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 492

HOUSE BILL NO. 1419
(Representatives Maragos, Mahoney, Froseth)
(Senators Maxson, W. Stenehjem)

HOME SOLICITATION SALES EXCEPTIONS

AN ACT to create and enact two new subsections to section 51-18-08 of the North Dakota Century Code, relating to exceptions to home solicitation sales regulations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 51-18-08 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

Sales when the seller provides that the consumer may receive a full refund for the return of undamaged and unused goods if the consumer requests a refund no later than fifteen days after the date the consumer receives the goods and if the seller provides the refund within thirty days after the date the seller receives the returned goods from the consumer. The return and refund privilege must be disclosed to the consumer orally and in writing with delivery of the goods.

Sales when the seller provides that the consumer may receive a full refund for a cancellation of services if the consumer requests a refund no later than fifteen days after the date the consumer receives the services and if the seller provides the refund within thirty days after the consumer cancels the order for the purchase of services not performed or provides a proportional refund for any services not yet performed for the consumer. The return and refund privilege must be disclosed to the consumer orally and in writing with delivery of the services.

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

Approved April 1, 1993
Filed April 2, 1993

SOCIAL SECURITY

CHAPTER 493

HOUSE BILL NO. 1518
(Representatives Gorman, Kelsch)
(Senators Goetz, Grindberg, Keller)
(Approved by the Delayed Bills Committee)

NEW JOBS TRAINING AND FUNDING

AN ACT to assist community economic development by providing incentive to businesses to locate and expand within the state through government-assisted new jobs training; to provide for reports to the budget section of the legislative council; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. When used in this Act, unless the context otherwise requires:

1. "Agreement" is the agreement between an employer and job service North Dakota concerning a project.
2. "Base employment level" means the number of full-time jobs an employer employs prior to the date of the commencement of the project.
3. "Community" means the city or county in which an eligible primary sector business is or will be located, or a local development corporation, community organization, or any other group the interest of which is in the economic growth of the area.
4. "Date of commencement of the project" means the date of the agreement.
5. "Department" means the department of economic development and finance.
6. "Employee" means the individual employed in a new job.
7. "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into an agreement.
8. "New job" means a job in a new or expanding primary sector business. The term does not include recalled workers returning to positions they previously held, replacement workers, including workers newly hired as a result of a labor dispute, or other jobs that formerly existed within the employment of the employer in the state.
9. "New jobs credit from withholding" means the credit as provided in section 3 of this Act.
10. "New jobs training program" or "program" means the project or projects established by job service North Dakota to provide workers with education and training required for jobs in new or expanding primary sector businesses in the state.

11. "Primary sector business" means an employer engaged in locating to or in this state which previously had no presence in this state, or in expanding its operations within this state, which through the employment of knowledge or labor, adds value to a product, process, or export service that results in the creation of new wealth, excluding production agriculture, if it meets the following eligibility criteria:

    a. An employer entering into an agreement, and increasing its base employment level by ten percent, or two employees, whichever is greater, or in the case of an employer without an established base employment level in this state creating a minimum of five employees, within the time set in the agreement, is entitled to the new jobs credit from withholding.

    b. An employer must have an economically productive and socially desirable purpose within the state.

    c. An employer must not be closing or reducing its operation in one area of the state and relocating substantially the same operation in another area.

    This subsection does not prohibit an employer from expanding its operations in another area of the state if existing operations of a similar nature are not closed or substantially reduced.

12. "Program costs" means all necessary and incidental costs of providing program services. The term does not include the cost of purchase of equipment to be owned or utilized by the training or educational institution or service.

13. "Program services" means training and education specifically directed to the new jobs, including the following:

    a. All direct training costs, such as:

        (1) Program promotion;

        (2) Instructor wages, per diem, and travel;

        (3) Curriculum development and training materials;

        (4) Lease of training equipment and training space;

        (5) Miscellaneous direct training costs;

        (6) Administrative costs; and

        (7) Assessment and testing.

    b. In-house or on-the-job training.

    c. Subcontracted services with institutions governed by the board of higher education, private colleges or universities, federal, state, or local agencies, or other private training or educational services.

14. "Project" means a training arrangement that is the subject of an agreement entered into between job service North Dakota and an employer to provide program services.

SECTION 2. Job service North Dakota - Agreements. Program services developed and coordinated by job service North Dakota must be provided to primary sector businesses found eligible for loans or grants under this Act. Job service North Dakota may enter into an agreement to establish a project with an employer which meets the following conditions:

1. Sets a date of commencement of the project.
2. Identifies program costs, including deferred costs, which are to be paid from available sources including new jobs credit from withholding to be received or derived from new jobs resulting from the project.
3. Provides for a guarantee by the employer of payment for program costs.
4. Provides that any deferral of program cost payments may not exceed ten years from the date of commencement of the project.
5. Provides that on-the-job training costs for employees may not exceed fifty percent of the annual gross payroll costs of the new jobs in the first full year after the date of commencement of the project. For purposes of this subsection, "gross payroll" is the gross wages and salaries for the new jobs.
6. Provides the maximum amount of new jobs credit from withholding, or tuition and fee payments, allowed for a project.
7. Provides that every employee participating in the new jobs training program must be paid an income at least equal to one hundred twenty percent of the federal poverty level for a family of four as determined at the date of commencement of the project, for the life of the loan.

A project requiring a loan from the department or a community may not be approved, and an agreement may not be executed by job service North Dakota, until notification from the department or community that the employer has qualified for a loan. Upon execution of the agreement, job service North Dakota shall notify the state tax commissioner of the agreement and the identity of the employer. Job service North Dakota may adopt rules to implement this Act. Job service North Dakota shall prepare an annual report for the governor and the legislative assembly with respect to the new jobs training program.

SECTION 3. New jobs credit from income tax withholding - Continuing appropriation. Loans made under section 4 of this Act for program costs must be repaid by receipt of new jobs credit from withholding as follows:

1. New jobs credit from withholding must be based upon the wages paid to the new employees.
2. The North Dakota income tax withholding on wages paid by the employer to each new employee participating in a project must be credited from the withholding payments made by the employer pursuant to section 57-38-60. The tax commissioner shall transmit the equivalent credit payment amount to the state treasurer to be allocated to a special fund for payment to

the department, community, or both, as the case may be, of principal and interest on loans issued pursuant to section 4 of this Act. All moneys deposited in the fund are hereby appropriated for the purposes of this section. When the principal and interest on the loans have been repaid, the employer credits must cease and any money received after the loans have been repaid must be remitted by the tax commissioner to the general fund of the state.

3. The employer shall provide such other information the tax commissioner may require.

4. A new employee participating in a project must receive full credit for the amount withheld as provided in section 57-38-59.

5. The tax commissioner and state treasurer shall administer this section and may adopt rules consistent with and necessary for the administration of this section.

6. The provisions of chapter 57-38 pertaining to the administration of the income tax withholding, including provisions for refund or credit, not in conflict with the provisions of this Act, shall govern the administration of the credit provided by this Act.

SECTION 4. Fund - Administration. Funding for programs must be through loans or grants as stated under this section. Loans may be made by the department from the North Dakota future fund, a community, or the department and a community cooperatively. A community may provide loans directly or through any financial institution currently qualified to participate in a loan with the Bank of North Dakota. The Bank of North Dakota may participate in loans under such credit standards and lending policies it determines are necessary and applicable. A community may alternatively fund a program through a grant without use of new jobs credit from withholding.

1. Loans must be secured and payable from a sufficient portion of the future receipts of payments authorized by the agreement, with such other security as the lender may determine is justified. The state treasurer shall transfer the moneys from the special fund created in section 3 of this Act to a special fund set up for this purpose by the department or community. The receipts must be pledged to the payment of principal of and interest on the loan.

2. The department may adopt rules to implement this chapter.

SECTION 5. REPORTS TO LEGISLATIVE COUNCIL BUDGET SECTION. The tax commissioner shall report to the budget section of the legislative council the allocations to the special fund under section 3 of this Act, the executive director of job service North Dakota shall report to the budget section on the agreements entered under section 2 of this Act, and the director of the department of economic development and finance shall report to the budget section on loans, grants, and new jobs qualified for program services. The tax commissioner, executive director of job service North Dakota, and the director of the department of economic development and finance shall provide any other information relating to this Act which the budget section requests. The reports must be presented at the times requested by the budget section, but not less than once in each calendar year.

SECTION 6. EXPIRATION DATE. This Act is ineffective after June 30, 1995, but the provisions of this Act as they existed on June 30, 1995, remain effective after that date for any loan, grant, or agreement entered or rule adopted before July 1, 1995.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 494

SENATE BILL NO. 2107
(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT ACCOUNT NONCHARGING

AN ACT to amend and reenact subsection 2 of section 52-04-07 of the North Dakota Century Code, relating to noncharging of employer accounts for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-04-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Notwithstanding subsection 1, an employer's account may not be charged for any of the following:

   a. With benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143; 42 U.S.C. 5122(2)], if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.

   b. With benefits paid to an individual who left the employment of the employer voluntarily without good cause or with good cause not involving fault on the part of the employer or who was discharged from employment by the employer for misconduct.

   c. As provided under section 52-06-29.

   d. With benefits paid to an individual who is in training with the approval of the bureau.

   e. With benefits paid to an individual who is subsequently determined not entitled to receive the benefits.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 495

SENATE BILL NO. 2110
(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

JOB SERVICE PROPERTY SALE AND PURCHASE

AN ACT to authorize the state of North Dakota acting through job service North Dakota to sell certain property; to amend and reenact section 52-04-22 of the North Dakota Century Code, relating to use of the job service North Dakota federal advance interest repayment fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Sale of property by job service North Dakota - Appropriation. The state of North Dakota acting through job service North Dakota is hereby authorized to sell and convey all of lot two of the replat of lots b and c of the replat of block 1, Drees second addition to Grand Forks, North Dakota, and the east two hundred feet of lot "C" replat of block 1 Drees second addition to Grand Forks, North Dakota. Job service North Dakota may cause the above-described real property to be sold in the manner prescribed by sections 54-01-05.1 and 54-01-05.2. The provisions of section 54-01-05.5 do not apply to the sale and conveyance authorized by this Act. Proceeds from the sale must be used as authorized and directed by law. Proceeds from the sale are hereby appropriated for acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota.

SECTION 2. AMENDMENT. Section 52-04-22 of the North Dakota Century Code is amended and reenacted as follows:

52-04-22. Federal advance interest repayment fund - Appropriation. There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund must consist of all interest collected on delinquent contributions, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau.

Moneys in this fund may also be used for the purpose of paying interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation,

or alteration of job service owned office facilities. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or alteration of job service owned office facilities.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 496

SENATE BILL NO. 2108
(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT BENEFIT ELIGIBILITY

An Act to amend and reenact subsection 2 of section 52-06-04 and section 52-06-05 of the North Dakota Century Code, relating to eligibility for unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 2 of section 52-06-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. To qualify as an insured worker an individual must have been paid wages for insured work in at least two calendar quarters of the individual's base period totaling not less than one and ~~three-tenths~~ one-half times the individual's total wages paid during the quarter of the individual's base period in which the individual's wages were the highest. However, the wage credits of an individual earned during the period commencing with the end of the prior base period and ending on the date on which the individual filed a valid claim ~~shall~~ are not ~~be~~ available for benefit purposes in a subsequent benefit year unless, in addition thereto, ~~such~~ the individual has subsequently earned wages for insured work in an amount equal to at least ten times the individual's current weekly benefit amount. Base-period wages used to determine an individual's monetary eligibility under this subsection, as a result of the following employment, ~~shall~~ may not exceed ten times the individual's weekly benefit amount:

   a. Employment by a partnership, if one-fourth or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.

   b. Employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.

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[1] NOTE: Section 52-06-04 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

c. This provision does not apply if, at the time of the claim, such ownership interest has been ceded.

SECTION 2. AMENDMENT. Section 52-06-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-06-05. Maximum potential benefits. Any otherwise eligible individual is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line which includes the individual's ratio of total base-period wages to highest quarter base-period wages:

Ratio of Total Base-Period Wages to High Quarter	Times Weekly Benefit Amount
~~1.30 to 1.49~~ 1.50 to 2.29	12
~~1.50 to 2.29~~ 2.30 to 2.44	14
~~2.30 to 2.49~~ 2.45 to 2.59	16
~~2.50~~ 2.60 to 2.74	18
2.75 to 2.89	20
2.90 to 3.04	22
3.05 to 3.19	24
3.20 or more	26

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 497

SENATE BILL NO. 2069
(Government and Veterans Affairs Committee)
(At the request of Job Service North Dakota)

OASIS BENEFITS

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to primary insurance benefits under the old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:

   a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or

      (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;

   b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and

   c. (1) Effective July 1, ~~1991~~ 1993, three hundred forty dollars; or

      (2) Effective July 1, ~~1992~~ 1994, three hundred ~~twenty~~ sixty dollars.

Approved March 10, 1993
Filed March 11, 1993

SPORTS AND AMUSEMENTS

CHAPTER 498

SENATE BILL NO. 2511
(Senator Maxson)

OFFICERS AT PUBLIC EVENTS

AN ACT to amend and reenact section 53-02-08 of the North Dakota Century Code, relating to officers to be in attendance at public dances, music festivals, or concerts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-02-08 of the North Dakota Century Code is amended and reenacted as follows:

53-02-08. Officer of law to be in attendance at public dance, music festival, or public concert. The sheriff in any county in which any public dance, music festival, or public concert is held outside of an incorporated city, and the chief peace officer of the city where the dance, music festival, or public concert is held within the limits of a city, shall police such dance, music festival, or public concert so that law and order are there maintained. The sheriff or the chief peace officer shall determine the number, if any, of deputy sheriffs ~~or~~, special officers, or licensed private security officers needed to police the dance, music festival, or public concert properly. The person conducting any such dance, music festival, or public concert, before the dance, music festival, or public concert is held, shall pay to such sheriff ~~or~~, peace officer, or licensed private security provider the expense of any deputy sheriff ~~or~~, special officer, or licensed private security officer required for the proper policing of such dance, music festival, or public concert, and no such dance, music festival, or public concert may be permitted to proceed unless such officer or officers are present and fees therefor are paid. The holding of such dance, music festival, or public concert without giving notice thereof to the sheriff of the county or the peace officer of the city, and without making provision for the policing thereof, is unlawful. No person, directly or indirectly interested or concerned in the giving, holding, or conducting of such public dance, music festival, or public concert, or connected with the person conducting the same, is eligible to appointment under this section as a special officer.

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

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 499

HOUSE BILL NO. 1416
(Representative Kretschmar)

GAMING LAW CHANGES

AN ACT to amend and reenact section 53-06.1-01, subsection 1 of section 53-06.1-01.1, sections 53-06.1-01.2, 53-06.1-02, 53-06.1-02.1, 53-06.1-03, 53-06.1-03.3, 53-06.1-05, 53-06.1-05.1, 53-06.1-06, 53-06.1-07, 53-06.1-07.1, 53-06.1-07.2, 53-06.1-07.3, 53-06.1-07.4, 53-06.1-08, 53-06.1-08.1, 53-06.1-09, 53-06.1-10, 53-06.1-10.1, 53-06.1-11, 53-06.1-12, 53-06.1-12.2, 53-06.1-13, 53-06.1-13.1, 53-06.1-14, 53-06.1-15, 53-06.1-15.1, 53-06.1-15.4, 53-06.1-16, 53-06.1-16.1, 53-06.1-16.2, 53-06.1-17, and subsection 5 of section 53-06.2-11 of the North Dakota Century Code, relating to games of chance and the gaming commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **53-06.1-01. Definitions.** As used in this chapter:

1. "Adjusted gross proceeds" means, except ~~in the case of the~~ for games of draw poker and stud poker authorized under section 53-06.1-07.2, gross proceeds less cash prizes ~~or~~ and the price of merchandise prizes ~~and~~, less the ~~charitable gaming tickets~~ pull tab excise tax imposed by section 53-06.1-12.2, and less the amount of federal excise tax and interest imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401]. In the games of draw poker and stud poker, "adjusted gross proceeds" means the time buy-ins or tournament fees collected by the ~~eligible~~ licensed organization.

2. ~~"Bona fide guest" means a person who is not a member of an eligible organization, but who is allowed to use the facilities of the organization when invited by a member or the organization in accordance with the eligible organization's bylaws, articles of incorporation, charter, rules, or other written statement.~~

~~3. "Charitable gaming ticket" means the game piece used in pull tab games or jar ticket games.~~

~~4.~~ "Charitable organization" means ~~any nonprofit~~ an organization ~~operated~~ incorporated as a nonprofit corporation whose primary purpose is for ~~the~~ relief of ~~poverty, distress~~ poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals,

[1] NOTE: Section 53-06.1-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

or other condition of public concern within this state, which has been ~~so engaged~~ actively fulfilling its primary purpose within this state for the two immediately preceding years.

~~5.~~ 3. "Civic and service ~~club~~ organization" means any branch, lodge, or chapter of a nonprofit national or state organization which is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or service purpose within this state, and which ~~shall have existed in~~ has been actively fulfilling its primary purpose within this state for the two immediately preceding years. ~~"Civic and service club"~~ The term also means a similar local nonprofit organization, not affiliated with a state or national organization, which is recognized by resolution adopted by the governing body of the city in which the organization conducts its principal activities, or by the governing body of a county if ~~such~~ the organization conducts its principal activities outside the limits of a city ~~but within a county~~. Such ~~club shall~~ organization must have ~~existed in~~ been actively fulfilling its primary purpose within this state for the two immediately preceding years.

~~6.~~ 4. "Commission" means the state gaming commission.

~~7.~~ 5. "Distributor" means a person~~, firm, corporation, association, or organization which~~ that sells, markets, or otherwise distributes ~~raffle tickets, bingo~~ gaming equipment~~, or any other implements of gambling~~ usable in the lawful conduct of games of chance under this chapter. ~~"Distributor"~~ The term does not include a resident printer who prints raffle tickets at the request of a licensed ~~or authorized~~ organization or an organization that has been issued a local permit, and who sells or otherwise distributes such raffle tickets to ~~such~~ the organization.

~~8.~~ 6. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:

a. ~~To the extent used for purposes enumerated in subdivisions c through l, uses benefiting those organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code.~~ Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.

b. ~~To the extent used for purposes enumerated in subdivisions c through l, uses benefiting an organization registered with the North Dakota secretary of state under chapter 50-22.~~ Uses for developing, promoting, and supporting tourism within a city or the state.

c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:

(1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.

(2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.

(3) Assistance to libraries and museums.

(4) Assistance for the performing arts and humanities.

(5) Preservation of cultural heritage.

(6) Youth community and athletic activities.

(7) Adult amateur athletic activities within the state, such as softball, including uniforms and equipment.

(8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.

(9) Scientific research.

d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:

(1) Relief to an individual or family suffering from poverty or homelessness.

(2) Encouragement and enhancement of the active participation of the elderly in our society.

(3) Services to the abused.

(4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.

(5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.

(6) Relief for the sick, diseased, and terminally ill and their physical well-being.

(7) Funds for emergency relief and volunteer services.

(8) Funds to nonprofit nursing homes and other nonprofit medical facilities.

(9) Social services and education programs aimed at aiding ~~the~~ emotionally and physically distressed, handicapped, elderly, and underprivileged persons.

(10) Funds for crime prevention, fire protection and prevention, and public safety.

e. (1) Fraternal uses, consistent with uses ~~and priorities~~ enumerated in subdivisions e a through ~~l and section 53-06.1-02~~ m, specified by an organization's constitution, charter, articles

of incorporation, or bylaws and not of direct benefit to the eligible organization.

(2) Fraternal uses or disbursements to perpetuate the memory and history of the dead.

f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants are excluded from receiving ~~charitable gaming funds~~ net proceeds under this subdivision or any other provision of this chapter.

g. The erection or maintenance of public buildings or works, public utilities, or public waterworks.

h. Uses otherwise lessening the burden of government which include disbursements to any entity that is normally funded by the city, county, state, or United States government and disbursements directly to a city, county, state, or the United States government, or any agency, political subdivision, or instrumentality thereof.

i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.

j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.

k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.

l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:

(1) Funds for adult bands, including drum and bugle corps.

(2) Funds for trade shows and conventions conducted in this state.

(3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife propagation and habitat enhancement program.

(4) Funds for public transportation and recreation.

m. To the extent the net proceeds are used toward the primary purpose of a charitable, educational, religious, or public-spirited organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, the organization may establish a special trust fund as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games of chance or dissolve. The commission may adopt rules for the establishment of special trust funds.

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned or leased by an organization unless it is used exclusively for one or more of the stated eligible uses. ~~Eligible~~ Except for uses related to an eligible organization's primary purpose, eligible uses do not include any activities consisting of attempts to influence legislation~~,~~ or promote or oppose referendums or initiatives~~, or~~. Eligible uses do not include participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office. In addition, the ~~licensing authority~~ commission may adopt rules to limit or restrict eligible use disbursements to ensure that ~~funds~~ net proceeds are best utilized for educational, charitable, fraternal, religious, patriotic, or other public-spirited purposes.

~~9.~~ 7. "Educational organization" means any nonprofit public or private elementary or secondary school, two-year or four-year college, or university in this state which has been ~~in existence~~ active for the two immediately preceding years.

~~10.~~ 8. "Eligible organization" means bona fide nonprofit veterans, charitable, educational, religious, ~~and~~ fraternal ~~organizations~~, civic and service ~~clubs~~, public safety, and ~~other~~ public-spirited organizations as defined by this ~~chapter~~ section, which may be licensed by the attorney general or ~~authorized~~ issued a local permit by the governing body of a city or county to conduct games of chance under this chapter.

~~11. "Entire net proceeds" or "net proceeds" means the adjusted gross proceeds less such expenses and taxes as are specifically authorized under this chapter.~~

~~12.~~ 9. "Fraternal organization" means ~~a nonprofit~~ an organization within this state, except college and high school fraternities, which is incorporated as a nonprofit corporation and which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. ~~Such~~ The organization ~~shall~~ must have ~~existed~~ been actively fulfilling its primary purpose within this state for the two immediately preceding years, and must have obtained an advance ruling or final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code. However, if the organization's gross receipts in each tax year are normally not more than twenty-five thousand dollars, the organization is not required to

have obtained an advance ruling or final determination from the internal revenue service.

~~13.~~ 10. "Gross proceeds" means all moneys collected or received from conducting games of chance and from games of chance admissions ~~thereto~~.

~~14.~~ 11. ~~"Licensee"~~ "Licensed organization" means an eligible organization licensed ~~under this chapter~~ by the attorney general to conduct bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, poker, and sports pools.

~~15.~~ 12. ~~"Licensing authority" means the attorney general.~~ "Local permit" means a permit issued to a nonprofit organization recognized as a public-spirited organization by a governing body of a city or county that authorizes the organization to conduct only bingo, raffles, and sports pools in that city or county.

~~16.~~ 13. "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of games of chance under this chapter. ~~"Manufacturer"~~ The term does not include a resident printer who prints raffle tickets at the request of a licensed ~~or authorized~~ organization or an organization that has been issued a local permit, and who sells or otherwise distributes such raffle tickets to ~~such an~~ the organization.

14. "Manufacturer's distributor" means a wholesaler of a manufacturer of electronic-mechanical pull tab dispensing devices and associated equipment who maintains a parts inventory, who sells at wholesale dispensing devices and associated equipment directly to a licensed distributor, and who does not sell or otherwise provide these items to a licensed organization.

~~17.~~ 15. "Member" means a person who has qualified for and been admitted to membership in an eligible organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement, and who pays regular monthly, annual, or other periodic dues or is a fully paid life member of the eligible organization. "Member" includes auxiliary members, but excludes social and honorary members.

~~18. "Other public spirited organization" means a nonprofit organization which has been in existence within this state for two years and is recognized by the governing body of a city or county by resolution as public spirited and eligible to conduct games of chance under this chapter.~~

16. "Net proceeds" means the adjusted gross proceeds less such expenses and taxes as are specifically authorized under this chapter.

~~19.~~ 17. "Person" means any person, firm, partnership, corporation, association, or organization.

18. "Public safety organization" means an organization incorporated as a nonprofit corporation whose primary purpose is to actively engage in firefighting, ambulance service, or similar disaster assistance, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.

19. "Public-spirited organization" means an organization incorporated as a nonprofit corporation whose primary purpose is for scientific research, amateur sports competition, safety, arts, agriculture, preservation of cultural heritage, educational activities, educational public service, youth, or similar organization, and which does not meet the definition of veterans, fraternal, charitable, educational, religious, civic and service, or public safety organization, which has been actively fulfilling its primary purpose within this state for the two immediately preceding years and is recognized by the governing body of a city or county by resolution as public spirited. However, a nonprofit organization recognized as a public-spirited organization by a governing body of a city or county for obtaining a local permit does not need to meet this definition.

20. "Pull tab" means the game piece used in deals of pull tabs.

~~20.~~ 21. "Religious organization" means any nonprofit organization, church, body of communicants, or group gathered in common membership incorporated as a nonprofit corporation whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances which has been actively so gathered or united in this state for the two immediately preceding years.

~~21.~~ 22. "Veterans organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States. ~~Such organizations shall~~ The organization must have been ~~in existence~~ actively fulfilling its primary purpose in this state for the two immediately preceding years and must have obtained an advance ruling or final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code. However, if the organization's gross receipts in each tax year are normally not more than twenty-five thousand dollars, the organization is not required to have obtained an advance ruling or final determination from the internal revenue service.

SECTION 2. AMENDMENT. Subsection 1 of section 53-06.1-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state gaming commission consists of the chairman and four other members appointed by the governor, with the consent of the senate. The members serve three-year terms and until a successor is appointed and qualified. If the senate is not in session when the term of a member expires, the governor may make an interim appointment, and the interim appointee holds office until the senate confirms or rejects the appointment. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first.

SECTION 3. AMENDMENT. Section 53-06.1-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01.2. Duty of attorney general to participate in certain hearings - Employment of private counsel by commission. The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of ~~chapters 53-06.1 and 53-06.2~~ this chapter. The commission may employ private counsel ~~for adoption of rules and to ensure that its hearings are conducted fairly~~.

SECTION 4. AMENDMENT. Section 53-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-02. Organizations eligible under chapter - Use of net proceeds. Nonprofit veterans, charitable, educational, religious, ~~and~~ fraternal ~~organizations~~, civic and service ~~clubs~~, public safety, and public-spirited organizations, as ~~those terms are~~ defined by this chapter, are eligible to conduct games of chance under ~~the conditions of~~ this chapter. The ~~entire~~ net proceeds of such games of chance ~~are to~~ must be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter. Notwithstanding any other provision of this chapter, an ~~eligible~~ organization~~, which is not required to be licensed by the attorney general,~~ that has been issued a local permit may use the net proceeds ~~of such games of chance~~ to directly benefit the ~~eligible~~ organization.

SECTION 5. AMENDMENT. Section 53-06.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-02.1. Waiver of two-year ~~existence~~ active requirement - Local permit. An organization that has not been ~~in existence~~ actively fulfilling its primary purpose within this state for the two immediately preceding years ~~becomes an eligible~~ may be recognized as a public-spirited organization for purposes of this section upon approval by the governing body of the city, if the organization will conduct games of chance ~~only~~ within that city, or upon approval by the board of county commissioners, if the organization will conduct games of chance within the county. An organization that ~~becomes an eligible~~ is recognized as a public-spirited organization under this section is not eligible for licensure by the attorney general until it has ~~been in existence~~ actively fulfilled its primary purpose within this state for the two immediately preceding years and may only conduct games of chance under a local ~~authorization~~ permit as provided in subsection 1 of section 53-06.1-03 ~~until it becomes an eligible organization as otherwise provided in this chapter~~.

SECTION 6. AMENDMENT. Section 53-06.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03. ~~Licensure --~~Exceptions for raffles, sports pools, and bingo - City and county ~~authorization~~ local permits and site authorizations - Licensure by attorney general **- Fees - Suspension and revocation.**

1. ~~Except as otherwise provided in this section, eligible organizations desiring to conduct games of chance shall apply annually for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred fifty dollar license fee, except for those organizations whose average annual gross proceeds do not exceed twenty-five thousand dollars, for which the fee is one hundred dollars.~~

~~2.~~ A nonprofit organization shall obtain a local permit as follows:

a. ~~Any~~ A nonprofit organization recognized as ~~public-spirited~~ a public-spirited organization by the governing body of a city or county may obtain a local ~~authorization~~ permit to conduct only raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate ~~does~~ prizes do not exceed six thousand dollars annually, ~~or~~ and to conduct sports pools, for professional sports only, in which the total wagers do not exceed five hundred dollars for each pool.

b. A nonprofit organization that conducts a city or county festival or celebration may be recognized as a public-spirited organization by the governing body of a city or county and may obtain a local ~~authorization~~ permit to conduct raffles in which the primary prize does not exceed one thousand dollars and the aggregate ~~does~~ prizes do not exceed two thousand dollars. For purposes of this subdivision, a "city or county festival or celebration" means an event:

(1) In celebration of local heritage, anniversary of establishment of the political subdivision, or other significant local event recognized as public spirited by the governing body of the city or county; and

(2) Supported by significant community participation.

c. To obtain a local ~~authorization~~ permit, the nonprofit organization shall apply directly to the governing body of the city in which ~~it conducts its principal activities~~ the site is located where the raffle, sports pool, or bingo activity will be conducted or, if ~~its principal activities are conducted~~ the raffle, sports pool, or bingo activity is conducted at a site located in a county but outside the limits of a city, ~~it~~ the organization shall apply to the board of county commissioners. ~~Applications~~ Application for ~~the conduct of games of chance subject to authorization by a city or county~~ a local permit must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish ~~authorization fees~~ a local permit fee not to exceed twenty-five dollars for each ~~authorization~~ local permit.

d. For purposes of ~~this subsection~~ issuing a local permit, the determination of what is a ~~"public-spirited" organization~~ "public-spirited organization" is within the sole discretion of the governing body of the city or county.

2. Except as otherwise provided in this section, an eligible organization desiring to be licensed to conduct lawful games of chance shall apply annually for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred fifty dollar license fee, except the fee is one hundred dollars for an organization whose average annual gross proceeds do not exceed twenty-five thousand dollars. An organization shall provide clear and convincing evidence that the organization qualifies as an eligible organization. If a licensed organization amends its primary

purpose as stated in its articles of incorporation or changes its basic character in a material manner, the organization shall reapply for licensure with the attorney general.

3. The attorney general shall license eligible organizations that conform to the requirements of this chapter by issuing licenses as follows:

   a. A class A license to an eligible organization that is ~~prohibited because of its nature or purpose for existence from expending charitable gaming net proceeds for the organization's own purposes or benefit and is, therefore, required to disburse its net proceeds to beneficiaries for educational, charitable, patriotic, fraternal, religious, or other public-spirited uses~~ a fraternal, veterans, or civic and service organization.

   b. A class B license to an eligible organization that is ~~permitted because of its nature or purpose for existence to expend charitable gaming proceeds for its own educational, charitable, patriotic, fraternal, religious, or other public-spirited uses~~ a charitable, religious, educational, public-spirited, or public safety organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license. An eligible organization that qualifies for a class A license may not also be issued a class B license.

   c. ~~A class C license to an eligible organization that conducts games of chance on not more than two occasions per year.~~

   ~~d.~~ The ~~attorney general shall~~ commission may establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the ~~eligible~~ licensed organization, and the adjusted gross proceeds collected or expected to be collected by the ~~eligible~~ licensed organization.

4. ~~Games~~ A licensed organization may conduct games of chance ~~may be operated or conducted~~ only on ~~premises or sites~~ an authorized site set forth in the application as follows:

   a. ~~License applicants~~ A licensed organization shall first secure approval of the proposed site ~~or sites on~~ at which it intends to conduct lawful games of chance ~~under this chapter~~ from the governing body of the city, if within city limits, or the county, if outside city limits, where the site ~~or sites are~~ is located. This approval ~~or permit~~, which may be granted at the discretion of the governing body, must be recorded on a site authorization form which is to accompany the license application to the attorney general for final approval. The governing body may charge a one hundred dollar fee for ~~this permit~~ the site authorization.

   b. Rented premises are subject to rules adopted by the ~~attorney general~~ commission.

   c. Only one ~~eligible~~ licensed organization or organization that has been issued a local permit at a time may ~~be authorized to~~ conduct games of

chance at a specific ~~location~~ authorized site, except that a raffle drawing may be conducted for special occasions when one of the following conditions are met:

(1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.

(2) Upon request of the regular licensee, the licensee's license is suspended for that specific day by the attorney general or commission.

d. Licenses, rules of conduct and play, state gaming stamps, and state ~~identification devices~~ registration stamps must be displayed on forms and in the manner specified in rules adopted by the ~~attorney general~~ commission.

e. No licensed organization or closely connected licensed organizations as a unit may have more than thirty authorized sites unless granted a waiver by the attorney general. However, after June 30, 1995, no licensed organization or closely connected licensed organizations as a unit may have more than twenty-five authorized sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization willing to conduct gaming at a site for which a waiver is being sought, the attorney general may approve the waiver. The attorney general may not grant a licensed organization a waiver for more than five sites. Closely connected licensed organizations are two or more organizations which have unitary characteristics that may include common primary purposes, members on boards of directors, officers, management, employees, bookkeepers, program services, integrations of gaming activities, and shared facilities.

5. The attorney general may, ~~by motion~~ based on reasonable ground or upon written complaint, suspend, deny, or revoke under chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this subsection unless that organization conducts gaming determined to be in violation of chapter 12.1-28 or subsection 1 of section 53-06.1-07.

6. The attorney general ~~or the commission~~ may impose monetary fines on licensed organizations, distributors, manufacturers' distributors, and manufacturers for failure to comply with ~~any provision of~~ this chapter or any rule adopted under this chapter. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor or ~~manufacturer~~ manufacturer's distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand

dollars. This fine may be in addition to or in lieu of a license ~~suspensions~~ suspension or ~~revocations~~ revocation.

SECTION 7. AMENDMENT. Section 53-06.1-03.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03.3. ~~Charitable gaming ticket~~ Pull tab sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other than a site where bingo is the primary game of chance conducted, the monthly rent may not exceed:

1. If the game of twenty-one is conducted on the site, in addition to the rent allowable for the game of twenty-one, one hundred twenty-five dollars.

2. If the game of twenty-one is not conducted on the site, two hundred twenty-five dollars.

SECTION 8. AMENDMENT. Section 53-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-05. Local ~~approval~~ permit for educational organizations, college fraternities, and sororities for raffles, sports pools, and bingo. An educational organization, college fraternity, or sorority shall apply in writing to the governing body of the city in which it is located, or to the board of county commissioners if the educational organization or the college is located outside ~~the geographical limits of a~~ city limits, for ~~permission~~ a local permit to conduct raffles, sports pools, or bingo at least thirty days ~~prior to~~ before each occasion. The application must state the time, place, and educational, charitable, patriotic, fraternal, religious, or other public-spirited uses to which the net proceeds will be devoted. An applicant fraternity or sorority shall include a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity or sorority. The governing body ~~may~~ at its ~~own~~ discretion by ordinance or resolution, and upon application, ~~grant permission~~ may issue a local permit for raffles, sports pools, and bingo to be held at specifically designated times and places for specific uses covering a one-year period. The governing body ~~may~~ by ordinance or resolution may establish ~~authorization fees~~ a local permit fee not to exceed twenty-five dollars for each ~~authorization. If the governing body, at its own discretion, chooses to authorize raffles, sports pools, or bingo pursuant to this chapter, the governing body may do so by resolution~~ local permit.

SECTION 9. AMENDMENT. Section 53-06.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-05.1. Regulation by city or county of number of twenty-one tables per site and number of sites per ~~eligible~~ licensed organization. Cities, for sites ~~or locations~~ within city limits, or counties, for sites ~~or locations~~ outside city limits, may establish by ordinance or resolution a maximum number of tables for twenty-one per site and a maximum number of sites upon which ~~an eligible~~ a licensed organization may conduct games of chance within the city or county.

SECTION 10. AMENDMENT. Section 53-06.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games of chance - ~~Premises~~ Gaming site - Equipment - Compensation.

1. No person, except a member or employee of ~~an eligible~~ a licensed organization or an organization that has been issued a local permit or a member of an organization auxiliary to ~~an eligible~~ a licensed organization or an organization that has been issued a local permit, may assist in the holding, operating, or conducting of any game of chance under this chapter. In the conduct of pull tabs through an electronic-mechanical dispensing device, the attorney general may allow employees of licensed alcoholic beverage establishments to provide limited assistance to ~~an authorized~~ a class B ~~license-holding eligible~~ licensed organization ~~the~~ whose adjusted gross proceeds ~~of which do~~ does not exceed ~~sixty~~ eighty thousand dollars per quarterly reporting period of operation or to any class A ~~license-holding eligible~~ licensed organization. However, a volunteer of an eligible organization may sell raffle tickets.

2. Except when authorized by the attorney general, no games of chance may be conducted with any gaming equipment other than gaming equipment owned by an eligible organization or rented at a reasonable rate by an eligible organization from a licensed distributor.

3. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and distribution of the ~~entire~~ net proceeds of ~~any game~~ games of chance ~~held in accordance with this chapter~~.

4. The ~~premises~~ gaming site where any game of chance is being held, operated, or conducted, or where it is intended that the game will be held, must be open to inspection by the attorney general~~, the attorney general's agents and employees, by representatives of the governing body authorizing games of chance,~~ and by ~~peace officers of any political subdivision~~ law enforcement officials of this state.

5. When any merchandise prize is awarded in a game of chance, its value is its current retail price.

6. Equipment, prizes, and supplies for games of chance may not be purchased or sold at prices in excess of the usual price thereof.

7. ~~The~~ A class A organization must devote the entire net proceeds derived from ~~the holding of~~ conducting games of chance ~~must be devoted~~ within three months from the ~~date~~ end of the quarter in which such proceeds were earned to ~~the~~ eligible uses ~~permitted by this chapter~~. ~~Any~~ A class A organization desiring to hold the net proceeds ~~of games of chance~~ for a period longer than three months ~~from the date such proceeds were earned must~~ shall apply to the ~~licensing authority or governing body, as the case may be,~~ attorney general for special permission, and upon good cause shown, the ~~licensing authority or governing body~~ attorney general may grant the request.

8. No person who has pled guilty to or been found guilty of a felony may sell or distribute equipment, or conduct or assist in games of chance under this chapter for five years from the date of the conviction or release

from incarceration, parole, or probation, whichever is the latter. No person determined by the attorney general to have participated in organized crime or unlawful gambling, may be permitted to sell or distribute equipment, or conduct or assist in games of chance under this chapter for a period determined by the attorney general.

9. Any person involved with the conduct of games of chance must be:

   a. A person of good character, honesty, and integrity.

   b. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.

10. The attorney general or commission may prohibit a person from playing games of chance if the person violates ~~any provision of~~ this chapter or any rule adopted under this chapter.

11. The attorney general or commission may require a licensed organization to pay a bingo or raffle prize to a player based on a factual determination, after opportunity for the parties to be heard, by the attorney general or commission.

12. If bingo is the primary game of chance conducted at an authorized site, no licensed organization may pay bingo prizes in which the aggregate of the bingo prizes for a quarter exceeds the total bingo gross proceeds for the quarter at that site. However, a bingo prize that equals or exceeds ten thousand dollars is excluded from the computation of the aggregate of the bingo prizes.

SECTION 11. AMENDMENT. Section 53-06.1-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07. Games of chance allowed.

1. ~~Eligible~~ Only eligible organizations licensed by the attorney general ~~shall be permitted to~~ may conduct bingo, raffles, calcuttas, ~~charitable gaming tickets~~ pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools ~~for professional sports only~~. These games may only be conducted and played at gaming sites authorized by a local governing body and approved by the attorney general.

2. ~~College fraternities or sororities may conduct raffles, sports pools, and bingo.~~

3. ~~Eligible organizations shall be permitted to conduct draw poker in accordance with section 53-06.1-07.2.~~

4. ~~In electronic video gaming device play of any game of chance permitted by this section, the maximum prize per play is five hundred dollars.~~

~~5.~~ ~~Any~~ The game ~~using charitable gaming tickets~~ of pull tabs may be conducted only through use of commingled games ~~after June 30, 1991~~.

SECTION 12. AMENDMENT. Section 53-06.1-07.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.1. Limitations on hours and participation in games of chance. A person under twenty-one years of age may not ~~participate in placing a wager in the~~ directly or indirectly play games of ~~charitable gaming tickets~~ pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. A person under eighteen years of age ~~not accompanied by an adult~~ may not ~~participate in~~ directly or indirectly play the game of bingo unless the person is accompanied by an adult, the bingo game is ~~locally authorized under section 53-06.1-03~~ conducted by an organization that has been issued a local permit, or the game's prize structure does not exceed ~~those~~ that allowed under subsection 1 of section 53-06.1-03 for ~~locally authorized games~~ local permits. The games of ~~charitable gaming tickets~~ pull tabs, punchboards, twenty-one, paddlewheels, ~~or~~ and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the ~~political subdivision~~ county or city.

SECTION 13. AMENDMENT. Section 53-06.1-07.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.2. Draw poker and stud poker - Limited authorization. ~~An eligible~~ A licensed organization may conduct the game of draw poker on not more than two occasions per year as follows:

1. The ~~eligible~~ organization may supply the dealer.
2. The maximum single bet is one dollar.
3. Not more than three raises, of not more than one dollar each, may be made among all the players in each round of bets. Otherwise the normal rules of draw poker and stud poker apply.
4. The ~~eligible~~ organization shall assess each player a fee not to exceed two dollars per half hour of playing time by that person, collected in advance. A fee may be charged each player for entry into a tournament for prizes which fee may be in lieu of or in addition to the fee assessable at one-half hour intervals.

SECTION 14. AMENDMENT. Section 53-06.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.3. Calcuttas. ~~An eligible~~ A licensed organization may ~~allow the playing of~~ conduct a calcutta ~~on the authorized site. Calcuttas are allowed~~ for professional or amateur sporting events held in this state, but not for elementary, secondary, or postsecondary education sports events. The ~~eligible~~ organization shall post at the gaming site all rules affecting the conduct and play of calcuttas ~~or requirements of participants~~. ~~An eligible~~ The organization may not have an interest in the outcome of the calcutta. A ~~participant who places~~ player must place a wager in the calcutta auction pool ~~must be~~ at the authorized site. No more than one wager per competitor may be allowed in any calcutta pool. The amounts paid to calcutta pool ~~participants~~ players in prizes may not exceed ninety percent of

the gross proceeds. No competitor in a calcutta pool may be under eighteen years of age.

SECTION 15. AMENDMENT. Section 53-06.1-07.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.4. Paddlewheels. ~~An eligible~~ A licensed organization ~~may conduct the game of paddlewheels on the authorized site. The eligible organization~~ shall post at the site all rules affecting the conduct of paddlewheels and requirements of players. A paddlewheel is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer or marker to indicate the winning number or symbol. The maximum price per paddlewheel ticket may not exceed two dollars. No money may be allowed on the playing table. A table must be used to register a player's wagered paddlewheel ticket when a cash prize is a variable multiple of the price of the paddlewheel ticket. No player may place ~~more than ten~~ paddlewheel tickets valued at more than twenty dollars on each spin of the paddlewheel. Cash, chips, or merchandise prizes may be awarded. No single cash prize, value of chips, or the current retail price of the merchandise prize to be awarded for a winning paddlewheel ticket may exceed one hundred dollars. The monthly rent for each paddlewheel playing table may not exceed the amount authorized by law for a twenty-one table.

SECTION 16. AMENDMENT. Section 53-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-08. Punchboards and ~~charitable gaming tickets~~ pull tabs - Sale of chances - Maximum price per ~~ticket~~ pull tab. Unless all of the ~~highest denomination of winners~~ top tier winning pull tabs or punchboard punches have been ~~sold~~ redeemed, or unless otherwise permitted by the attorney general, ~~a~~ no person or organization ~~engaged in the selling of chances from~~ conducting games of ~~charitable gaming tickets~~ pull tabs or punchboards ~~under this chapter~~ may ~~not discard the chances from any~~ close the game ~~of charitable gaming ticket or punchboard~~ once the contents of that game ~~of charitable gaming ticket or punchboard are~~ have been offered for sale to ~~eligible participants~~ players. The maximum sales price per ~~charitable gaming ticket~~ pull tab and punchboard punch may not exceed two dollars.

SECTION 17. AMENDMENT. Section 53-06.1-08.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-08.1. Limitation on ~~charitable gaming ticket~~ pull tab prizes. ~~An eligible~~ A licensed organization may not conduct a game of ~~charitable gaming tickets~~ pull tabs in which the ~~highest denomination winner~~ prize value of the top tier winning pull tab exceeds five hundred dollars.

SECTION 18. AMENDMENT. Section 53-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-09. Sports pools - Control ~~by licensee~~ - Rules posted - Limitation on prizes. ~~An eligible~~ A licensed organization or organization that has been issued a local permit may ~~allow the playing of~~ conduct sports pools ~~on the premises or authorized site. Sports pools are allowed~~ for professional sports only. ~~If sports pools are allowed, they must be conducted and controlled by the eligible organization.~~ The ~~eligible~~ licensed organization or organization that has been issued a local permit shall clearly post any rules affecting the conduct of sports

pools or requirements of ~~participants~~ players. The maximum wager on any sports pool is five dollars. The amounts paid to sports pool ~~participants~~ players in prizes may not exceed ninety percent of the gross proceeds.

SECTION 19. AMENDMENT. Section 53-06.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one - Sale of chips - Redemption - Wager - Limit - Rules of play - Tips. ~~Any licensee~~ A licensed organization may conduct and shall control the playing of the ~~card~~ game twenty-one on ~~the~~ its authorized site ~~of the licensee, but at no other location~~. No money may be allowed on the table. The ~~licensee~~ organization shall provide playing chips of various denominations to ~~the participants~~ players. Chips must be redeemed by the licensee for their full value. The maximum limit per wager may be set by the ~~licensee or eligible~~ organization at not more than five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. Twenty-one is a card game played by a maximum of seven players and one dealer. The dealer must be a representative of the ~~eligible~~ organization sponsoring the game of chance. Each player plays the player's hand against the dealer's hand. In order to remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is termed a natural twenty-one and is an automatic payout except in case of a tie count with the dealer. Players may double down on a natural twenty-one. In the case of matching or tie count between the player and the dealer, no winner is declared and the player keeps the player's wager. A licensee may allow the pooling of tips received by dealers at an authorized site. Any requirement to pool tips is within the sole discretion of each licensee and may not be imposed or encouraged by the ~~licensing authority~~ attorney general or commission. Each licensee conducting twenty-one shall post rules relating to the conduct of the game in a conspicuous location near where the game is played. After December 31, 1993, except for an organization's authorized site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, no organization may conduct twenty-one at an authorized site with wagers exceeding two dollars unless the organization has first installed video surveillance equipment as required by rules adopted by the commission and the equipment is approved by the attorney general. The commission may delay the requirements for surveillance required by this section for good cause shown if the commission specifically finds that the delay would allow the installation of video surveillance equipment of superior technological capability and enhanced enforcement value. In no event may the delay extend beyond July 1, 1994.

SECTION 20. AMENDMENT. Section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10.1. Raffles - Limitation - Prizes. Prizes for raffles may include any property which may be legally owned and possessed, but may not include real estate. Cash prizes may be awarded in raffles ~~conducted under this chapter~~ provided the value of no single cash prize exceeds one thousand dollars~~,~~ and provided ~~further~~ that ~~no eligible organization may award~~ total cash prizes ~~totaling more than~~ do not exceed three thousand dollars in ~~the aggregate during any~~ one day.

SECTION 21. AMENDMENT. Section 53-06.1-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11. Statement of receipts - Expenses.

1. All moneys collected or received from games of chance and admissions thereto, except cash prizes of one hundred dollars or less paid immediately, must be deposited in a special account of the ~~eligible~~ licensed organization which contains only that money. Cash prizes of an amount to be determined by the attorney general~~, the~~ and purchase prices of merchandise prizes~~, and all expenses for such games of chance~~ must be withdrawn from such account by consecutively numbered checks duly signed by a specified officer or officers of the ~~eligible~~ organization and payable to a specific person or organization. There must also be written on the check the nature of the ~~expense or~~ prize for which the check is drawn. No check may be drawn to "cash" or a fictitious payee. In the case of a cash prize of more than one hundred dollars, the prize may also be issued by an accountable receipt or nonnegotiable instrument approved by the attorney general.

2. No part of the net proceeds after they have been ~~given over~~ devoted to ~~another organization~~ an eligible use recipient may be used by the donee ~~organization~~ to pay any person for services rendered or materials purchased in connection with the ~~conducting~~ conduct of games of chance by the donor organization.

3. Subject to the limitations of this subsection, expenses incurred for games of chance may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. However, for an authorized site at which the game pull tabs is the only game of chance conducted and the conduct of pull tabs is through an electronic-mechanical dispensing device, expenses incurred for this game of chance may be deducted from adjusted gross proceeds, based on the average adjusted gross proceeds of all of an organization's authorized sites at which the game of pull tabs is conducted through electronic-mechanical dispensing devices, according to the following:

   a. On average adjusted gross proceeds not exceeding eight thousand dollars per quarter, an expense limitation of fifty percent.

   b. On average adjusted gross proceeds exceeding eight thousand dollars per quarter, but not exceeding twelve thousand dollars per quarter, an expense limitation of forty-five percent.

   c. On average adjusted gross proceeds exceeding twelve thousand dollars per quarter, but not exceeding sixteen thousand dollars per quarter, an expense limitation of forty percent.

   d. On average adjusted gross proceeds exceeding sixteen thousand dollars per quarter, an expense limitation of thirty-five percent.

   ~~After December 31, 1989, cash~~ Cash shorts incurred in games of chance are classified as expenses toward the expense limitation. Notwithstanding the limitations of this subsection, in addition to the expenses allowed to be deducted from adjusted gross proceeds, ~~an eligible~~ a licensed

organization may deduct as an expense ~~federal excise taxes and interest imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401] and incurred or paid by the organization for the period beginning January 1, 1986, and ending as of July 1, 1991~~ capital expenditures for security or video surveillance equipment used for controlling games of chance if the equipment is required by section 53-06.1-10 or rules adopted by the commission and the equipment is approved by the attorney general. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

SECTION 22. AMENDMENT. Section 53-06.1-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Tax based on adjusted gross proceeds. A tax as provided in this section upon the total adjusted gross proceeds received by a licensed ~~eligible~~ organization must be paid to the attorney general on a quarterly basis ~~in the manner and~~ upon ~~the~~ tax return forms as prescribed by the attorney general ~~by rule~~. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for expenses. The amount of this tax must be paid from adjusted gross proceeds and may not be charged against the percentage limitation of expenses. The tax is hereby imposed upon every ~~eligible~~ licensed organization, to be levied, collected, and paid quarterly with respect to the adjusted gross proceeds of the ~~eligible~~ organization as provided in this section, computed at the following rates:

1. On adjusted gross proceeds not in excess of two hundred thousand dollars per quarter, a tax of five percent.
2. On adjusted gross proceeds in excess of two hundred thousand dollars per quarter but not in excess of four hundred thousand dollars per quarter, a tax of ten percent.
3. On adjusted gross proceeds in excess of four hundred thousand dollars per quarter but not in excess of six hundred thousand dollars per quarter, a tax of fifteen percent.
4. On adjusted gross proceeds in excess of six hundred thousand dollars per quarter, a tax of twenty percent.

SECTION 23. AMENDMENT. Section 53-06.1-12.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **53-06.1-12.2. ~~Charitable gaming tickets~~ Pull tabs excise tax in lieu of sales and use taxes.** In addition to any other tax provided by law and in lieu of sales or use taxes, there is imposed a tax of two percent on the gross ~~receipts~~ proceeds from the sale at retail of ~~charitable gaming tickets~~ pull tabs to a final user. ~~A~~ Gross proceeds and a sale at retail for purposes of this section ~~includes charitable gaming tickets~~ include pull tabs sold and ~~charitable gaming tickets~~

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[2] NOTE: Section 53-06.1-12.2 was also amended by section 1 of House Bill No. 1516, chapter 501.

~~given~~ pull tabs provided a player in ~~return~~ exchange for ~~another charitable gaming ticket as authorized under this chapter. Gross receipts for purposes of this section includes the face value of all charitable gaming tickets sold or given in return for another charitable gaming ticket~~ redeemed winning pull tabs. The tax imposed by this section must be paid to the attorney general at the time tax returns are ~~made~~ filed and taxes ~~are~~ paid by the ~~eligible~~ licensed organization under section 53-06.1-12.

SECTION 24. AMENDMENT. Section 53-06.1-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-13. Examination of books and records. The attorney general ~~and the attorney general's agents,~~ and representatives of the governing body of a city or county with respect to ~~eligible organizations authorized~~ a licensed organization or organization that has been issued a local permit by that governing body~~,~~ may examine or cause to be examined the books and records of any ~~eligible~~ licensed organization ~~licensed~~ or ~~authorized~~ organization that has been issued a local permit to conduct games of chance under this chapter to the extent that such books and records may directly or indirectly relate to any transaction connected with holding, operating, or conducting any game of chance.

SECTION 25. AMENDMENT. Section 53-06.1-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-13.1. Financial statements. ~~Every eligible~~ A licensed organization receiving gaming gross proceeds of two hundred thousand dollars or more in the organization's annual accounting period shall file with the attorney general on or before the fifteenth day of the fifth month following the end of the accounting period a financial statement, including accompanying notes and footnotes, and a copy of the internal revenue service's form 990 titled return of organization exempt from income tax required to be filed under section 501(c) of the Internal Revenue Code. The financial statement must at least include a schedule of the sources of total revenue, total expenses, listing of the names of nongaming and gaming employees who received any form of compensation amounting to thirty thousand dollars or more during the accounting period, including specific sources of the compensation paid to each employee, and any information as required by the attorney general.

SECTION 26. AMENDMENT. Section 53-06.1-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-14. Distributors and manufacturers - Licensure.

1. ~~Every~~ A manufacturer of ~~charitable gaming tickets~~ pull tabs, ~~every~~ manufacturer of paper bingo cards, manufacturer of electronic-mechanical pull tab dispensing devices, manufacturer's distributor of electronic-mechanical pull tab dispensing devices, and ~~every~~ distributor shall apply annually for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand five hundred dollars~~, and the~~. The license fee for a manufacturer's distributor is five hundred dollars. The license fee for a manufacturer of electronic-mechanical pull tab dispensing devices, manufacturer of ~~charitable gaming tickets~~ pull tabs,

paper bingo cards, or both a manufacturer of pull tabs and paper bingo cards, is two thousand dollars.

2. No distributor may sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to other licensed distributors, licensed manufacturers' distributors, licensed organizations, organizations that have been issued a local permit, gaming schools, or other persons authorized by the attorney general. A manufacturer of ~~charitable gaming tickets~~ pull tabs or paper bingo cards may not sell, market, or otherwise distribute ~~charitable gaming tickets~~ pull tabs or paper bingo cards, other than to a licensed distributor. A distributor of ~~charitable gaming tickets~~ pull tabs or paper bingo cards must purchase or otherwise receive ~~charitable gaming tickets~~ pull tabs or paper bingo cards only from a licensed manufacturer or licensed distributor. A manufacturer of electronic-mechanical pull tab dispensing devices may not sell, market, or otherwise distribute pull tab dispensing devices other than to a licensed distributor or a licensed manufacturer's distributor. A licensed distributor and licensed manufacturer's distributor of electronic-mechanical pull tab dispensing devices may purchase or otherwise receive pull tab dispensing devices only from a licensed manufacturer, licensed manufacturer's distributor, or licensed distributor.

3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. No game of ~~charitable gaming tickets~~ pull tabs, punchboards, sports pool boards, calcutta boards, or a series of paddlewheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. North Dakota licensed distributors shall purchase the North Dakota gaming stamps from the attorney general's office and the cost for each stamp may not exceed twenty-five cents.

4. No licensed ~~or authorized eligible~~ organization or organization that has been issued a local permit may be a distributor. No North Dakota wholesaler of liquor or alcoholic beverages may be a North Dakota distributor. No North Dakota licensed manufacturer may be a North Dakota distributor or have any financial interest in a North Dakota distributor. No North Dakota distributor may have any financial interest in a North Dakota licensed manufacturer.

5. The attorney general ~~or commission~~ may, ~~by motion~~ based on reasonable grounds or on written complaint, suspend or revoke ~~a~~ an organization's local permit or an organization's, distributor's, or manufacturer's license for violation, by the ~~licensee~~ organization, distributor, or manufacturer or any officer, director, agent, member, or employee of the ~~licensee~~ organization, distributor, or manufacturer, of this chapter or any rule adopted under this chapter.

6. In addition to the basic license fee, the attorney general may require payment of any additional fee necessary to defray the actual costs of a

background investigation of applicants. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to beginning the investigation. The attorney general shall notify the applicant as soon as possible after a determination is made that the additional fee is necessary and shall also notify the applicant of the attorney general's best estimate of the amount of the additional license fee. Any applicant may then withdraw the application in lieu of paying the additional cost. The estimated cost must be placed into the attorney general's refund fund for use to defray the actual expenses of the background investigation. The remainder of ~~such~~ the funds must be returned to the applicant within thirty days of the conclusion of the investigation.

SECTION 27. AMENDMENT. Section 53-06.1-15 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15. Form and display of license and local permit. Each license ~~or authorization required under this chapter~~ and local permit must contain ~~a statement of~~ the name and address of the ~~licensee or authorized eligible~~ licensed organization or organization that has been issued a local permit and such other information as the ~~licensing~~ attorney general or ~~authorizing authority~~ local governing body may ~~designate~~ require.

Each license ~~or resolution issued for the conduct of any game or games of chance~~ and local permit must be conspicuously displayed at the ~~place where the same is to be conducted at all times during~~ gaming site when any game of chance is conducted and for at least thirty minutes thereafter. The sale of a raffle ticket does not require the display of the license or ~~authorizing resolution~~ local permit.

SECTION 28. AMENDMENT. Section 53-06.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15.1. Powers and duties of the attorney general. The attorney general ~~or the agents of the attorney general~~ may:

1. Inspect and examine all premises in which gaming is conducted or gaming devices or equipment are manufactured, sold, or distributed.
2. Inspect all equipment and supplies in, upon, or about such premises.
3. Seize and remove from such premises and impound any gaming related equipment, supplies, games of chance, or books and records for the purpose of examination and inspection. When books or records are seized, the attorney general shall provide copies of those records or books within twenty-four hours of a specific request by the organization for a copy of the books or records seized.
4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, licensees, lessors, manufacturers, and distributors, including any affiliated companies on their premises and in the presence of the applicants, licensees, lessors, manufacturers, distributors, or agents concerning any income or expense resulting from any gaming business, and require verification of income or expense, and all other matters affecting the enforcement of the policy and provisions of this chapter.

5. Audit and inspect any other books and records of eligible organizations conducting games of chance for the purpose of determining compliance with applicable statutes, rules, and constitutional provisions regarding ~~distribution~~ devotion of net proceeds from games of chance.

6. Enter into a reciprocal agreement with the commissioner of the internal revenue service of the United States for exchange of information for state tax administration purposes.

SECTION 29. AMENDMENT. Section 53-06.1-15.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15.4. Conditional license - Issuance. The attorney general, upon application and at the attorney general's discretion, may issue a conditional license to conduct games of chance to an eligible organization whose regularly issued license has been suspended or revoked for a violation of this chapter or rules adopted under this chapter. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions for issuance of the license as the attorney general determines necessary. Section 53-06.1-16.2 does not apply to an eligible organization to whom a conditional license is issued pursuant to this section.

SECTION 30. AMENDMENT. Section 53-06.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16. Violation of chapter or rule - Misdemeanor - Forfeiture of licensure - Ineligibility. Any person who knowingly makes a false statement in any application for a local permit, license, or authorizing resolution or in any statement annexed thereto, or who fails to keep sufficient books and records to substantiate the ~~receipts~~, gross proceeds, prizes, expenses, or ~~uses~~ devotion of net proceeds resulting from games of chance conducted under this chapter, or who falsifies any books or records so far as they relate to any transaction connected with the holding, operating, and conducting of any game of chance, or who violates ~~any of the provisions of~~ this chapter, any rule adopted under this chapter, or of any term of a local permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any license or ~~authorizing resolution~~ local permit issued to it pursuant to this chapter and is ineligible to reapply for a license or ~~authorization~~ local permit for a period of time ~~to be~~ determined by the attorney general or commission. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this section.

SECTION 31. AMENDMENT. Section 53-06.1-16.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16.1. Bogus chips, marked cards, cheating devices, or fraudulent schemes unlawful - Penalty. It is unlawful for any person playing or conducting any authorized game of chance conducted by a licensed organization:

1. To use bogus or counterfeit chips or ~~charitable gaming tickets~~ pull tabs, or to substitute or use any game, cards, ~~or charitable gaming tickets~~ pull tabs, or game piece that have been marked or tampered with.

2. To employ or have on one's person any cheating device to facilitate cheating in any game of chance.

3. To willfully use any fraudulent scheme or technique, including when an operator or player of games of ~~charitable gaming tickets~~ pull tabs directly or indirectly solicits, provides, or receives inside information of the status of a game for the benefit of either person.

4. To alter or counterfeit a site authorization, gaming license, or North Dakota gaming stamp.

5. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate ~~any provision of~~ this chapter or any rule adopted under this chapter.

A person violating this section is guilty of a class A misdemeanor unless the amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person uses a fraudulent scheme regarding soliciting, providing, or receiving inside information involving the game of pull tabs or uses a fraudulent scheme or technique to cheat or skim involving the games of twenty-one or bingo, regardless of the amount gained, then the offense is a class C felony.

SECTION 32. AMENDMENT. Section 53-06.1-16.2 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16.2. License suspension or revocation by attorney general or commission **- Ineligibility for local ~~authorization~~** permit. ~~Any person whose class A or class B~~ A licensed organization that has its license ~~is~~ suspended or revoked by the attorney general or commission or a licensed organization that has not devoted its nets proceeds is ineligible for a local ~~authorization~~ permit to conduct raffles, sports pools, or bingo during the period of suspension or revocation.

SECTION 33. AMENDMENT. Section 53-06.1-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-17. Rules. The commission shall adopt rules in accordance with chapter 28-32, relating to, but not limited to, methods of play, conduct, and promotion of games of chance; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by ~~licensees and authorized~~ licensed organizations; methods of competition and doing business by distributors, manufacturers, and manufacturers' distributors; marking or identification of raffle tickets, ~~charitable gaming tickets~~ pull tabs, bingo equipment, ~~ticket~~ pull tab receptacles, punchboards, or any other implements of gambling used or distributed in this state to implement or effectuate the provisions and purpose of this chapter; quality standards for the manufacture of ~~charitable gaming tickets~~ pull tabs, pull tab dispensing devices, and paper bingo cards; to ensure that the entire net proceeds of games of chance are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter; to protect and promote the public interest; to ensure fair and honest games of chance; to ensure that fees and taxes are paid; to impose monetary fines and establish appeal procedures; and to seek to prevent or detect unlawful gambling activity.

SECTION 34. AMENDMENT. Subsection 5 of section 53-06.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in

conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection ~~7~~ 6 of section 53-06.1-01.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 500

SENATE BILL NO. 2242
(Senators Nalewaja, Freborg, Holmberg)
(Representatives Kelsch, Kretschmar, Rydell)

GAMING COMMISSION QUALIFICATIONS

AN ACT to amend and reenact subsection 2 of section 53-06.1-01.1 of the North Dakota Century Code, relating to the qualifications of members of the gaming commission; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 53-06.1-01.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of gaming in this state. A person is also ineligible if that person has been convicted of a felony criminal offense or has pled guilty or been convicted of any violation of chapter 12.1-06, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-22, 12.1-23, 12.1-24, 12.1-28, 53-06.1, or 53-06.2, or has pled guilty or been convicted of any violation of section 6-08-16 or 6-08-16.2, or has pled guilty or been convicted of any offense or violation that has a direct bearing on the person's fitness to be involved in gaming. A person who has a financial interest in gaming cannot be a member of the commission and cannot be employed by the commission. For the purpose of this subsection, a financial interest includes the receiving of any direct payment from an eligible organization for property, services, or facilities provided to that organization. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.

SECTION 2. APPLICATION OF ACT. This Act does not apply to any member on the gaming commission on January 1, 1993.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 501

HOUSE BILL NO. 1516
(Representative Kretschmar)
(Senators Traynor, Krebsbach, Maxson)
(Approved by the Delayed Bills Committee)

GAMING AND TOBACCO TAX INCREASE

AN ACT to amend and reenact section 53-06.1-12.2, subsection 1 of section 57-36-25, subsection 1 of section 57-36-26, subsection 1 of section 57-36-28, and section 57-36-32 of the North Dakota Century Code, relating to games of chance taxes and tobacco products taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-12.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **53-06.1-12.2. Charitable gaming tickets excise tax in lieu of sales and use taxes.** In addition to any other tax provided by law and in lieu of sales or use taxes, there is imposed a tax of ~~two~~ four and one-half percent on the gross receipts from the sale at retail of charitable gaming tickets to a final user. A sale at retail for purposes of this section includes charitable gaming tickets sold and charitable gaming tickets given in return for another charitable gaming ticket as authorized under this chapter. Gross receipts for purposes of this section includes the face value of all charitable gaming tickets sold or given in return for another charitable gaming ticket. The tax imposed by this section must be paid to the attorney general at the time returns are made and taxes are paid by the eligible organization under section 53-06.1-12.

SECTION 2. AMENDMENT. Subsection 1 of section 57-36-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products sold in this state an excise tax at the rate of ~~twenty-two~~ twenty-eight percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section, the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to

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[1] NOTE: Section 53-06.1-12.2 was also amended by section 23 of House Bill No. 1416, chapter 499.

prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~twenty-two~~ twenty-eight percent of the wholesale purchase price at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

SECTION 4. AMENDMENT. Subsection 1 of section 57-36-28 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff, and other tobacco products in this state, and upon those consumers, at the rate of ~~twenty-two~~ twenty-eight percent of the cost to the consumer of those products.

SECTION 5. AMENDMENT. Section 57-36-32 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited.** There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of ~~nine and one-half~~ seventeen mills on each cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying the tax thereon to

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[2] NOTE: Section 57-36-32 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1993.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 502

SENATE BILL NO. 2155
(Judiciary Committee)
(At the request of the North Dakota Racing Commission)

HORSE RACING

AN ACT to create and enact a new subsection to section 53-06.2-05 and a new subsection to section 53-06.2-08 of the North Dakota Century Code, relating to receipt of moneys from the North Dakota horse racing foundation and establishing the period for which licenses are valid; and to amend and reenact subsections 1 and 11 of section 53-06.2-01, subsection 2 of section 53-06.2-02, subsections 1 and 4 of section 53-06.2-08, sections 53-06.2-09, 53-06.2-10, and subsections 3 and 6 of section 53-06.2-11 of the North Dakota Century Code, relating to definition of "breeders' fund" and "racing", racing commission membership, license authorization and fees, allotment of racing days, definition of parimutuel racing, powers of the racing commission, and deposits of moneys in purse, breeders', and racing funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 11 of section 53-06.2-01 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Breeders' fund" means a fund, administered by the commission, established to financially reward breeders or owners of North Dakota bred horses ~~that win races in the state~~ to be paid in accordance with rules as approved by the commission.

11. "Racing" means live or simulcast horse racing under the certificate system or simulcast dog racing under the certificate system.

SECTION 2. AMENDMENT. Subsection 2 of section 53-06.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of racing in this state. A person who has a financial interest in racing cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission. For purposes of this section, a person has a financial interest in racing if that person has an ownership interest in horses running at live or simulcast meets conducted or shown in this state subject to this chapter or rules of the commission, is required to be licensed under this chapter or the rules of the commission, or who derives any direct financial benefit from racing, individually or by or through an entity or other person, as regulated by this chapter or the rules of the commission.

SECTION 3. A new subsection to section 53-06.2-05 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Receive moneys from the North Dakota horse racing foundation for deposit in the purse fund, breeders' fund, or racing promotion fund in accordance with subsection 6 of section 53-06.2-11.

SECTION 4. AMENDMENT. Subsections 1 and 4 of section 53-06.2-08 of the North Dakota Century Code are amended and reenacted as follows:

1. Each license issued under the certificate system must describe the place ~~and~~, track, or racecourse at which the licensee may hold races. ~~The authority conferred in a license is limited to the calendar year for which it is issued.~~ Every license must specify the number of days the licensed races may continue, the hours during which racing may be conducted, and the number of races that may be held each day. ~~However, races~~ Races authorized under this chapter may be held ~~only between nine a.m. and twelve midnight~~ during the hours approved by the commission, and within the hours permitted by state law.

4. The commission may grant licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise workers, veterinarians, valets, and concessionaires, service providers, employees of racing associations, and such other persons as determined by the commission. ~~A license issued under this subsection cannot be valid for more than one calendar year, but the license is valid at all race meetings in which the licensee participates during that year.~~ License fees are as established by the commission.

SECTION 5. A new subsection to section 53-06.2-08 of the North Dakota Century Code is created and enacted as follows:

The commission may establish the period of time for which licenses issued under this chapter are valid.

SECTION 6. AMENDMENT. Section 53-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-09. Allotment of racing days. If an applicant is eligible to receive a license under this chapter, the commission shall fix the racing days that are allotted to that applicant and issue a license for the holding of racing meets. ~~An eligible applicant that has adopted and used regular or approximately regular dates for its events for the past two years is entitled to be allotted those days on request.~~

SECTION 7. AMENDMENT. Section 53-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-10. Certificate system - Rules. The certificate system allows a licensee to receive money from any person present at a live horse race, simulcast horse race, or simulcast dog race who desires to bet on any ~~horse entered~~ entry in that race. A person betting on ~~a horse~~ an entry to win acquires an interest in the total money bet on all ~~horses~~ entries in the race, in proportion to the amount of money bet by that person, under rules adopted by the commission. The licensee shall receive ~~such~~ the bets and for each bet shall issue a certificate to the bettor on

which is at least shown the number of the race, the amount bet, and the number or name of the ~~horse~~ entry selected by the bettor. The commission may ~~also~~ adopt rules for place, show, quinella, combination, or other types of betting usually connected with racing.

SECTION 8. AMENDMENT. Subsections 3 and 6 of section 53-06.2-11 of the September 1992 Advance Code Service of the North Dakota Century Code are amended and reenacted as follows:

3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. ~~Unclaimed tickets and breakage from the simulcast program, as defined by the commission, must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission.~~ Notwithstanding this section, the commission may, upon approval of the emergency commission, receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.

6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to section 3 of this Act in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 503

HOUSE BILL NO. 1059
(Representative Bateman)

LANDOWNER LIABILITY

AN ACT to amend and reenact section 53-08-05 of the North Dakota Century Code, relating to liability of owners of land used for recreational purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-08-05 of the North Dakota Century Code is amended and reenacted as follows:

53-08-05. ~~Willful or malicious failure~~ Failure to warn against dangerous conditions - Charge to enter. Nothing in this chapter limits in any way any liability which otherwise exists for:

1. Willful ~~or~~ and malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or

2. Injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of the land by the state.

Approved March 16, 1993
Filed March 16, 1993

STATE GOVERNMENT

CHAPTER 504

SENATE BILL NO. 2498
(Senator Naaden)

HONORARY EQUINE

AN ACT to create and enact a new section to chapter 54-02 of the North Dakota Century Code, relating to the designation of an honorary equine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-02 of the North Dakota Century Code is created and enacted as follows:

Honorary equine. The Nokota horse, in recognition of the significant role the breed has played in the history of this state, is designated an honorary equine of North Dakota.

Approved March 31, 1993
Filed April 1, 1993

CHAPTER 505

HOUSE BILL NO. 1256
(Representatives Kretschmar, Ness)

LEGISLATIVE COMPENSATION AND EXPENSES

AN ACT to amend and reenact subsection 1 of section 54-03-19.1, sections 54-03-19.2, and 54-03-20 of the North Dakota Century Code, relating to the legislative compensation commission and travel reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-03-19.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The legislative compensation commission shall ~~determine~~ develop recommendations for a long-term policy on legislative compensation, expense allowance, and insurance benefits, and recommend appropriate ~~rates~~ levels of compensation, expense allowance, and ~~compensation~~ insurance benefits to be paid to or on behalf of members of the legislative assembly.

SECTION 2. AMENDMENT. Section 54-03-19.2 of the North Dakota Century Code is amended and reenacted as follows:

54-03-19.2. Meetings - Powers and duties - Expenses. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each biennium. The commission shall determine ~~a proper level~~ levels of legislative compensation, expense allowance, and ~~per diem~~ insurance benefits to be paid for service upon interim committees and during legislative sessions, which permit citizens to hold legislative office without undue financial sacrifice or disadvantage. In ~~making such~~ formulating recommendations ~~it shall~~, the commission may consult with the leadership of the legislative assembly, and review ~~expense and~~ compensation ~~allowances~~, expense allowance, and insurance benefits for legislative service in other states~~,~~ and ~~comparable compensation and allowances~~ in other areas of state and federal service ~~as well as~~ and private industry~~, and shall determine rates of compensation and reimbursements that permit citizens to hold legislative office without undue financial sacrifice or disadvantage~~. The commission shall report its findings and recommendations regarding legislative compensation policy to the legislative assembly ~~within ten days after the convening of the regular legislative session~~. The commission may file with the legislative council a bill incorporating its recommendations. Members of the legislative compensation commission must be compensated for time spent in attendance at meetings of the commission and for other travel as approved by the chairman of the legislative council at the rate of sixty-two dollars and fifty cents per day and must be reimbursed for their actual and necessary expenses incurred in the same manner as other state officials. The expense allowance must be paid from appropriations then in effect for the legislative assembly. The commission may solicit the assistance of the staff of the legislative council to provide information, aid, and assistance in carrying out its duties.

SECTION 3. AMENDMENT. Section 54-03-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may not exceed thirty-five cents per mile based upon air mileage. ~~Members~~ A member of the legislative assembly who ~~do~~ does not receive reimbursement for lodging and ~~who do not live~~ whose place of residence in ~~a~~ the legislative district ~~completely or partially~~ that the member represents is not within the city of Bismarck ~~are~~ is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between ~~their residences~~ the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that ~~this~~ the total reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member ~~shall~~ is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 506

HOUSE BILL NO. 1221
(Representatives Kelsch, Carlisle, Coats)
(Senators Evanson, Mushik)

STATE OFFICER RESIDENCE LOCATION

AN ACT to repeal section 54-06-02 of the North Dakota Century Code, relating to the place of residence of state officers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-06-02 of the North Dakota Century Code is repealed.

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

Approved February 4, 1993
Filed February 4, 1993

CHAPTER 507

HOUSE BILL NO. 1406
(Representative Christopherson)

OMB APPROVAL OF AIRCRAFT CHARTERS

AN ACT to amend and reenact subsection 1 of section 54-06-09 of the North Dakota Century Code, relating to prior approval by the director of the office of management and budget of certain mileage and travel expenses of state officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-06-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The sum of twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle or twenty-seven cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing subdivision, agency, bureau, board, or commission. The sum of thirty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:

   a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.

   b. If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

   No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use. ~~In order to be reimbursed for the chartering of a private aircraft pursuant to subdivision b, the charter agreement must receive prior approval from the director of the office of management and budget who shall take comparable travel costs and the savings of time into account in making his decision.~~ If only one person shall engage in such travel in a motor vehicle

exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement must be limited to eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision thereof, no allowance may be made or paid for such mileage.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 508

HOUSE BILL NO. 1409
(Representative Christopherson)

OUT-OF-STATE TRAVEL AUTHORIZATION

AN ACT to repeal section 54-06-10 of the North Dakota Century Code, relating to authorization for out-of-state travel for state officials and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-06-10 of the North Dakota Century Code is repealed.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 509

SENATE BILL NO. 2243
(Senators Nalewaja, DeMers, Robinson)
(Representatives St. Aubyn, Bernstein, Cleary)

LEAVE DONATION AMONG STATE EMPLOYEES

AN ACT to provide for the donation of accumulated annual leave between state employees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State leave sharing program.

1. As used in this section:

   a. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term includes foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.

   b. "Relative of the employee" is limited to the spouse, child, stepchild, grandchild, grandparent, stepparent, or parent of an employee.

   c. "Severe" or "extraordinary" means serious, extreme, or life threatening.

   d. "State employee" means a permanent employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.

2. A state employee may donate annual leave to a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.

3. A state employee is eligible to receive shared leave pursuant to the following conditions:

   a. The chief administrative officer of the employee determines that the employee meets the criteria described in this section.

   b. The employee has abided by state policies regarding the use of sick leave.

   c. The employee's use of shared leave does not exceed four months in any twelve-month period.

4. A state employee may donate annual leave to another state employee only pursuant to the following conditions:

   a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory time off due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature, and involves the employee, a relative of the employee, or a household member of the employee;

   b. The condition has caused, or is likely to cause, the receiving employee to go on leave without pay or terminate employment; and

   c. The donating employee donates leave in full-hour increments and retains a leave balance of at least eighty hours.

5. The chief administrative officer of the state employee shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

6. Donated annual leave is transferable between employees in different state entities.

7. One hour of donated annual leave must be regarded as one hour of shared leave for the recipient.

8. Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.

9. All forms of paid leave available for use by the recipient must be used prior to using shared leave.

10. Any shared leave not used by the recipient during each occurrence as determined by the chief administrative officer of the employee may be retained by the recipient.

11. All donated leave must be given voluntarily. No state employee may be coerced, threatened, intimidated, or financially induced into donating annual leave for purposes of the leave sharing program.

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

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 510

HOUSE BILL NO. 1104
(Representatives St. Aubyn, Kelsch)
(Senators Nalewaja, Graba)

FELLOW EMPLOYEE SICK LEAVE DONATION

AN ACT to provide for the donation of accumulated sick leave between state employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State sick leave sharing program.

1. As used in this section:

   a. "Severe" or "extraordinary" means serious, extreme, or life threatening.

   b. "State employee" means a permanent employee with over six months continuous service with the state. It does not include employees in probationary status or employees on temporary or other limited term appointments.

2. A state employee may donate sick leave to a fellow state employee who is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.

3. A state employee may be eligible to receive shared leave pursuant to the following conditions:

   a. The chief administrative officer of the employee determines that the employee meets the criteria described in this section.

   b. The employee has abided by state policies regarding the use of sick leave.

   c. The employee's use of shared leave does not exceed four months in any twelve-month period.

4. A state employee may donate sick leave to another state employee only pursuant to the following conditions:

   a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory leave due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature;

   b. The condition has caused, or is likely to cause, the receiving employee to go on leave without pay or terminate employment; and

c. The employee may not donate more than five percent of the employee's accrued leave hours, and all leave must be donated in full-hour increments.

5. The chief administrative officer of the state employee shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the employee's condition.

6. Donated sick leave is transferable between employees in different state entities.

7. One hour of donated sick leave must be regarded as one hour of shared leave for the recipient.

8. Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.

9. All forms of paid leave available for use by the recipient must be used prior to using shared leave.

10. Any shared leave not used by the recipient during each occurrence as determined by the chief administrative officer of the employee may be retained by the recipient.

11. All donated leave must be given voluntarily. No state employee may be coerced, threatened, intimidated, or financially induced into donating sick leave for purposes of the leave sharing program.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 511

SENATE BILL NO. 2027
(Legislative Council)
(Interim Budget Committee on Government Services)

STATE AGENCY CHILD CARE PROVISION

AN ACT to allow a state agency or institution to provide for child care services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Child care services provided by state agency or institution. A state agency or institution may provide for child care services to the children of employees, students, or clients of the agency or institution in accordance with this section. Child care services may be provided by the institution only after the head of the agency or institution determines there is a need for the services and that the services will be provided at rates that are not less than the average rates charged by private child care providers providing comparable services in the community. Child care services may be provided in space available within the facility housing the agency or institution. An agency or institution may operate a child care center in available space or contract with a child care provider for child care services. Within the limits of legislative appropriations, the agency or institution may provide utilities and custodial and maintenance services for the child care center. Additional operating costs, including the salaries for a director and staff and the cost of supplies, must be borne by the center. A child care center provided for by an agency or institution may provide child care services to the children of employees, students, or clients of the agency or institution and, to the extent space is available, to any other children.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 512

HOUSE BILL NO. 1234
(Representatives St. Aubyn, Kelsch, Poolman)
(Senator Evanson)

STATE EMPLOYEE SUGGESTION INCENTIVES

AN ACT to provide for a suggestion incentive program for state employees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State employee suggestion incentive program.

1. There is established a suggestion incentive program for state employees. All persons employed by the state are eligible to participate in the program except state agency heads, administrators, or any supervisors considered at the management level by the state agency head.

2. A state employee may submit a recommendation or proposal to reduce expenditures within the employee's agency to a suggestion incentive committee. The suggestion incentive committee shall administer the employee suggestion incentive program created under this Act and review all recommendations or proposals for reduction of expenditures. The governor shall appoint five state agency heads to the suggestion incentive committee for four-year staggered terms to commence on August first in the year of appointment and to continue until the successors are appointed.

3. a. The suggestion incentive committee shall consider legitimate savings reductions in expenditures made possible within the state agency.

   b. The suggestion incentive committee shall determine if:

      (1) The recommendation or proposal has been previously submitted and rejected.

      (2) Implementation of the recommendation or proposal is desirable and feasible.

      (3) Implementation of the recommendation or proposal will continue to provide the quality of the services presently provided by the state agency.

   c. The suggestion incentive committee shall submit to the state agency head of the employee submitting the recommendation or proposal any recommendation and proposal the committee approves.

4. The state agency head shall review and determine whether a recommendation or proposal approved by the suggestion incentive committee is capable of implementation. The state agency head shall make the final decision on acceptance or rejection of a recommendation or proposal.

5. A state employee who submits a recommendation or proposal to reduce expenditures that is approved by the suggestion incentive committee and approved for implementation by the state agency head is entitled to receive ten percent of any savings realized up to a maximum of one thousand dollars. The agency savings must relate directly to the employee's proposed change. The suggestion incentive must be computed on the actual savings for a twelve-month period, the period to run from the time that the proposed change is instituted. An employee is entitled to the suggestion incentive payment at the end of the twelve-month period in a lump sum from funds of the employing state agency that realized the savings. Any payments to an employee under this program are in addition to the employee's regular salary. Employees who qualify for the suggestion incentive are entitled to an award for the first year's savings only and not for any subsequent years.

6. On July first of each year a state agency that makes a suggestion incentive payment in the preceding twelve months shall submit a report to the office of management and budget describing the implemented recommendation or proposal. On September first of each year, the office of management and budget shall provide to all state agencies a report describing the recommendations and proposals to reduce expenditures implemented by state agencies.

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

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 513

HOUSE BILL NO. 1469
(Representatives Dorso, Kerzman, Rydell)
(Senators Evanson, Kinnoin, Lips)

STATE EMPLOYEES COMPENSATION COMMISSION

AN ACT to provide for a state employees compensation commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State employees compensation commission - Appointment of members.

1. The state employees compensation commission shall make recommendations on appropriate levels of state employee compensation and fringe benefits. The commission may not consider conditions of employment other than salary and fringe benefit issues. The commissioner of labor shall provide staff services for the commission.

2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees, elected at large by a ballot of all state employees, are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The commissioner of labor shall conduct the election for the employee representatives. All commission members serve for a term of two years and may be reappointed or reelected for additional terms of office. The state employee members' terms begin on July first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on July first of each odd-numbered year. Of the initial state employees who are elected to the commission, one of the members of the classified service and the member of the nonclassified service must be elected for a one-year term and the other two elected state employees must be elected for a two-year term, and before the conclusion of each subsequent term, an election must be held to replace the two members whose terms will end in that year.

3. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each year of the biennium. The commission shall consider proper levels of compensation and fringe benefits for state employees and make its recommendations on these issues to the governor in time for consideration in preparation of the executive budget to be submitted to the next legislative assembly. The commission shall also submit its recommendations to the legislative council at the biennial meeting at which the legislative council receives the reports of its interim committees.

4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative council for each day

in attendance at commission meetings in the same manner as provided in section 54-35-10 for members of the legislative council and reimbursement from the legislative council for travel and other necessary expenses incurred in performing commission duties in the amounts provided for state employees under section 54-06-09. The state employee members of the commission are entitled to receive reimbursement for necessary expenses incurred in attending commission meetings at the rates provided for state employees under section 54-06-09 and may not be assessed any annual leave or loss of salary for attendance at meetings of the commission. The employing agency of state employee members shall pay their expenses.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 514

HOUSE BILL NO. 1155
(Political Subdivisions Committee)
(At the request of the State Auditor)

POLITICAL SUBDIVISION AUDITS

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to the requirements for audits of political subdivisions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.** The state auditor~~, by the duly appointed deputy auditors or other authorized agents,~~ shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law~~, the official financial records, accounts, and proceedings of the following governing bodies and officials of the following political subdivisions~~:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firemen's relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Vocational education centers.
13. Correction centers.

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[1] NOTE: Section 54-10-14 was also amended by section 16 of House Bill No. 1156, chapter 62.

14. Recreation service districts.

15. Weed boards.

16. Irrigation districts.

17. Rural ambulance service districts.

18. West river water supply district.

19. Southwest water authority.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. Fees for the audit performed by the state auditor must be paid to the state treasurer by the political subdivision audited. The fees must be deposited in the state auditor operating account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

The state auditor may in lieu of conducting an audit every two years require annual reports from school districts with less than one hundred enrolled students, ~~municipalities~~ cities with less than three hundred population, and other political subdivisions subject to this section, or otherwise provided by law, with less than ~~fifty~~ one hundred thousand dollars of annual receipts. The reports must contain ~~such~~ the financial information ~~as~~ required by the state auditor ~~may request~~. The state auditor may also make such additional examination or audit as deemed necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing ~~a financial~~ the annual report.

~~The governing board of any~~ A political subdivision may ~~provide for an audit~~, at the option of its governing body, be audited by a certified public accountant or licensed public accountant ~~and then~~ rather than by the state auditor ~~is not required to make the examination provided for in this section~~. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor ~~by the public accountant performing the audit~~ when the public accountant delivers the audit report ~~is delivered~~ to the political subdivision. The state auditor shall review the audit reports to determine if the reports are in the required form and have the required content, and if the audit meets generally accepted government auditing standards. The state auditor may also periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the reports are in the required form and have the required content, and the reports and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the ~~public accountant~~ political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

~~The governing board of the~~ A political subdivision may not pay ~~the audit fee until evidence of the filing is furnished, unless the~~ a public accountant

~~performing the~~ for an audit ~~has had a quality control or peer review covering governmental audits of political subdivisions or has completed a work paper review with the state auditor, in which case the governing body of the~~ until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. ~~If the political subdivision makes progress payments, the governing body of the~~ A political subdivision shall retain twenty percent of ~~each~~ any progress payment until ~~evidence is furnished that~~ the audit report ~~has been properly filed with~~ is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing ~~boards and~~ board, officers, or employees of the ~~subdivisions~~ political subdivision disclosed by the audit ~~reports~~ report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected ~~and fees for the audits, so resumed, are paid in accordance with this section. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to the political subdivision in preparing the audit report. All fees for the audits performed by the state auditor must be paid by the subdivision audited to the state treasurer and deposited in a state auditor operating account to be used by the state auditor, within the limits of legislative appropriation, for expenses relating to political subdivision audits~~.

SECTION 2. EFFECTIVE DATE. This Act is effective for any issued audit report dated after August 1, 1993.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 515

HOUSE BILL NO. 1200
(Human Services Committee)
(At the request of the Office of Management and Budget)

SEXUAL ABUSE INVESTIGATION TEAM

AN ACT to amend and reenact section 54-12-04.2 of the North Dakota Century Code, relating to child sexual abuse investigation and prosecution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-04.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-04.2. Child sexual abuse investigation and prosecution. The child sexual abuse investigation and prosecution team consists of an assistant attorney general, an agent of the state bureau of criminal investigation, and a licensed social worker ~~employed by the department of human services. The attorney general shall appoint an assistant attorney general and an agent of the bureau of criminal investigation to the team and the executive director of the department of human services shall appoint a licensed social worker to the team~~ employed by the attorney general. On request of any state's attorney, the team shall assist, within the limits of legislative appropriation and available staff resources, with the investigation and prosecution of child sexual abuse cases.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 516

SENATE BILL NO. 2229
(Appropriations Committee)
(At the request of the Office of Management and Budget)

LIGNITE RESOURCE EVIDENCES OF INDEBTEDNESS

AN ACT to provide for a continuing appropriation of lignite research funds; and to amend and reenact section 54-17.5-05 of the North Dakota Century Code, relating to lignite resource evidences of indebtedness issued by the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17.5-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17.5-05. Evidences of indebtedness.

1. Evidences of indebtedness issued by the industrial commission under this chapter are payable solely from:

   a. Appropriations by the legislative assembly from moneys in the lignite research fund.

   b. Revenues or income that may be received by the commission from lignite projects, processes, or activities funded under this chapter with the proceeds of the commission's evidences of indebtedness.

   c. Revenues or income received by the commission under this chapter from any source.

2. Not later than July fifteenth of each year preceding the biennial session of the legislative assembly, the industrial commission shall submit to the office of the budget a request for the amount required to be appropriated from the lignite research fund to pay debt service on outstanding evidences of indebtedness during the following biennium.

3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and are not debt of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision. The evidences of indebtedness must be executed by the manual or facsimile signature of a member or members of the commission and the manual signature of a designated authenticating agent. Any evidences of indebtedness bearing the signature of a member of the commission in office at the date of signing are valid and binding for all purposes notwithstanding that before delivery the person has ceased to be a member of the commission.

4. The industrial commission shall establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:

   a. All moneys appropriated by the legislative assembly to the commission for the purpose of the reserve fund.

   b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the commission and the holders of its evidences of indebtedness or any resolution of the commission concerning the proceeds of its evidences of indebtedness.

   c. Any lawfully available moneys of the commission which it may determine to deposit in the reserve fund.

   d. Any moneys from any other source made available to the commission for deposit in the reserve fund.

5. Moneys in the reserve fund may be expended only to pay the principal of and interest on evidences of indebtedness, including payment of any premium required to be paid when evidences of indebtedness are redeemed prior to maturity, and sinking fund installments as the same become due and payable.

6. Moneys in the reserve fund may only be withdrawn in conformity with the terms of any contract between the commission and the holders of its evidences of indebtedness or any resolution of the commission concerning the proceeds of its evidences of indebtedness.

7. The industrial commission must include in its biennial request to the office of the budget the amount, if any, necessary to restore the reserve fund to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution described in subdivision b of subsection 4. The legislative assembly may appropriate such amount from the lignite research fund to the commission for deposit in the reserve fund. If sufficient moneys are not available in the lignite research fund, the legislative assembly may appropriate any amount necessary out of any moneys in the general fund or any special funds in the state treasury not otherwise appropriated.

SECTION 2. Lignite research fund - Continuing appropriation. All money deposited in the lignite research fund is appropriated as a continuing appropriation to the industrial commission, except as provided in section 54-17.5-05, to be used for the purposes stated in chapter 54-17.5.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 517

SENATE BILL NO. 2151
(Natural Resources Committee)
(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION AND LIGNITE RESEARCH COUNCIL RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 54-17.5-06 of the North Dakota Century Code, relating to access to industrial commission and lignite research council records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17.5-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17.5-06. Access to commission records.

1. Materials and data submitted to, or made or received by, the commission, to the extent that the commission determines the materials or data consist of trade secrets, or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, and are subject to section 44-04-18.4.

2. A person or entity must file a request with the commission to have material designated as confidential under subsection 1. The request must contain any information required by the commission, and must include at least the following:

   a. A general description of the nature of the information sought to be protected.

   b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

   c. An explanation of why the information is not readily ascertainable by proper means by other persons.

   d. A general description of any person or entity that may obtain economic value from disclosure or use of the information, and how the person or entity may obtain this value.

   e. A description of the efforts used to maintain the secrecy of the information.

3. Any request under subsection 2 is confidential. The commission shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the commission determines the information is

either not relevant or not a trade secret, the commission shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.

4. The names or identities of independent technical reviewers on any project or program and the names of individual lignite council members making recommendations are confidential, may not be disclosed by the commission, and are not public records subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 518

SENATE BILL NO. 2179
(Education Committee)
(At the request of the Superintendent of Public Instruction)

MISSING CHILDREN LOCATION

AN ACT to amend and reenact section 54-23.2-04.2 of the North Dakota Century Code, relating to identification and location of missing children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-23.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-04.2. School enrollment procedures to aid identification and location of missing children.

1. When a child enrolls in a public or nonpublic school, licensed day care facility, ~~or~~ home-based instruction, licensed day care center, licensed child care facility, headstart program, or nursery school for the first time, the school, licensed day care facility, headstart program, or school superintendent of the jurisdiction shall:

   a. Require the child's parent, guardian, or legal custodian to present to the school, licensed day care facility, or school superintendent of the jurisdiction, within forty days of enrollment, proof of identity of the child; and

   b. Request the appropriate school records for the child from the previous school attended by the child. The school enrolling the child shall make the request within thirty days of enrollment of the child.

2. If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection 1 within forty days of enrollment or if the school does not receive the school records of the child within sixty days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction shall notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority that no proof of identity has been presented for the child.

3. A school shall transfer records or proof of identity of a child within ten calendar days upon receipt of request.

4. When a school, licensed day care facility, or school superintendent receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school or facility has been reported as a missing child, the school, licensed day care facility, or school superintendent shall:

a. Flag the records of the child; and

b. Notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority if a request for school records is received from any source.

5. When the division of vital records of the state department of health and consolidated laboratories receives a notice from a law enforcement authority that a person is reported as missing, the division of vital records shall:

a. Flag the records of the individual; and

b. Notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority if a request for records is received from any source.

6. If it is necessary for law enforcement authorities to conduct an investigation on a missing child, school or day care personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

7. For purposes of this section:

a. "Flag the records" means marking the division of vital records, school, day care, or home-based instruction records in such a manner that any personnel viewing that record will be automatically alerted that the child or individual has been reported as missing.

b. "Home-based instruction" means as applied in chapter 15-34.1.

c. "Proof of identity" means a certified copy of a birth certificate, a certified transcript, or similar student records from the previous school, or any other documentary evidence the school, licensed day care facility, or school superintendent considers appropriate proof of identity.

d. "School" or "licensed day care facility" means all elementary and secondary schools, ~~as well as any~~ licensed day care centers, licensed child care facilities, headstart programs, and nursery schools whether public~~, private,~~ or ~~parochial~~ nonpublic.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 519

SENATE BILL NO. 2147
(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

CORRECTIONS EMPLOYEE INFORMATION CONFIDENTIAL

AN ACT to provide for confidentiality of selected information regarding department of corrections and rehabilitation employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Confidentiality of selected information pertaining to department of corrections and rehabilitation employees. Telephone numbers and home addresses of department of corrections and rehabilitation employees are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. If this information is recorded with other public information, the department shall permit inspection and receipt of copies of the public information that is not confidential, and shall delete or withhold the confidential information. No public agency or record custodian may deny a request for public information on the ground that it is recorded with confidential addresses and phone numbers. Records containing this information may be disclosed to appropriate authorities under policy established by the North Dakota department of corrections and rehabilitation.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 520

SENATE BILL NO. 2076
(Appropriations Committee)
(At the request of the State Treasurer)

CHECKS OF STATE TREASURER APPROPRIATION

AN ACT to amend and reenact section 54-27-15.1 of the North Dakota Century Code, relating to checks issued by the state treasurer; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-15.1 of the North Dakota Century Code is amended and reenacted as follows:

54-27-15.1. State treasurer's checks, warrants, and warrant-checks - Cancellation - Deposit to common schools trust fund - Subsequent payment - Continuing appropriation. The state treasurer, at the beginning of each fiscal year, shall prepare a list of the checks, warrants, and warrant-checks drawn on various depositories which are more than three years old which remain outstanding and unpaid and shall show the number, date, payee (with address of payee if available), amount, bank on which drawn, and fund against which said instrument was drawn. A copy of such list must then be used as an authority for writing a receipt of the total of such check or checks and shall credit such amount to the common schools trust fund pursuant to chapter 47-30.1. One copy of such receipt with list of instruments affected must be provided to the administrator of unclaimed properties. In the event such check, warrant, or warrant-check is at any subsequent time presented for payment, or a claim is made by any person for the amount of any such instrument, further proceedings must be conducted in accordance with chapter 47-30.1. These expenditures are hereby subject to a standing and continuing appropriation.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 521

HOUSE BILL NO. 1323
(Representatives Wilkie, Allmaras, Jacobs)
(Senators Jerome, Krauter, Langley)

MOTOR VEHICLES REGISTERED BY TRIBES

AN ACT to create and enact section 54-27-19.2 of the North Dakota Century Code, relating to the reporting of the number of motor vehicles registered under tribal authority on an Indian reservation for the purpose of calculating each county's share of highway tax distribution fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 54-27-19.2 of the North Dakota Century Code is created and enacted as follows:

54-27-19.2. Reporting of number of motor vehicles registered on Indian reservations - Use for determining each county's share of highway tax distribution fund. Before the tenth day of each month, each governing body of an Indian reservation having a motor vehicle registration ordinance may report the number of motor vehicles registered on the reservation to the director of the department of transportation. The director of the department of transportation shall multiply the number of motor vehicles reported by a factor that represents the portion of funds in the highway tax distribution fund derived from taxes on motor fuels and other special fuels during the most recent fiscal year. The director of the department of transportation shall report the resulting product to the state treasurer for incorporation into the county distribution formula in subsection 2 of section 54-27-19 as follows:

1. Where the boundaries of the Indian reservation do not encompass more than one county, the director of the department of transportation shall credit the total product to that county.

2. Where the boundaries of the Indian reservation encompass more than one county, the director of the department of transportation shall allocate the product to each county containing a portion of the Indian reservation in the ratio of the number of reservation registered motor vehicles in that county to the total of reservation registered motor vehicles in all the counties containing a portion of that Indian reservation. If the number of reservation registered motor vehicles in a county containing a portion of an Indian reservation is not available, the director of the department of transportation shall allocate the product to each county containing a portion of an Indian reservation in the ratio of the number of miles of county roads, as designated under section 24-05-16, within the county on the reservation to the total of the number of miles of county roads on the reservation.

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

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 522

HOUSE BILL NO. 1407
(Representative Christopherson)

STATE AGENCY PROPERTY INVENTORY

AN ACT to amend and reenact section 54-27-21 of the North Dakota Century Code, relating to fixed asset minimum reporting value.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-21 of the North Dakota Century Code is amended and reenacted as follows:

54-27-21. Fixed asset minimum reporting value. All state departments, agencies, and institutions shall include all fixed assets under their control in their financial statements, except those having a value of ~~three~~ seven hundred and fifty dollars or less. The state auditor is authorized to provide for the written exemption of specific fixed assets having a value of more than ~~three~~ seven hundred and fifty dollars when such exemption is justified upon generally accepted accounting principles.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 523

SENATE BILL NO. 2487
(Senator Graba)

LOCAL GOVERNMENT EFFICIENCY PLANNING GRANTS

AN ACT to amend and reenact subsection 1 of section 54-35.2-02.1 of the North Dakota Century Code, relating to local government efficiency planning grants; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35.2-02.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The advisory commission on intergovernmental relations shall administer planning grants not exceeding twenty-five thousand dollars per grant to county or city governments, which may be made upon approval of plans intended to increase the efficiency of local government through restructuring of the administration of county or city government, changes in county boundaries including consolidation of counties, or consolidation or sharing of county and city officials or services. The commission may also expend funding directly on behalf of county and city governments for defraying the expenses of research and studies.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of $51,400, or so much of the sum as may be necessary, to the advisory commission on intergovernmental relations for the purpose of providing planning grants to counties and cities under section 54-35.2-02.1 for the period beginning with the effective date of this Act and ending June 30, 1995.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 524

SENATE BILL NO. 2357
(Senators Dotzenrod, Lindgren, Thane, Tomac, Graba)

UNEXPENDED LOCAL GOVERNMENT GRANTS

AN ACT to create and enact a new subsection to section 54-35.2-02.1 of the North Dakota Century Code, relating to redeposit of returned funds from local government efficiency planning grants in the state aid distribution fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-35.2-02.1 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Unexpended grant funds that are returned must be deposited in the state aid distribution fund.

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

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 525

HOUSE BILL NO. 1360
(Representative Wardner)

REGIONAL COUNCILS

AN ACT to amend and reenact sections 54-40.1-01, 54-40.1-02, 54-40.1-03, 54-40.1-04, 54-40.1-05, and 54-40.1-06 of the North Dakota Century Code, relating to regional councils.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.1-01. Legislative findings and purpose. The legislative assembly finds that the citizens of the state have a fundamental interest in the orderly development of the state and its resources. This finding recognizes the fact that the mobility of the population, changes in economic forces, and governmental mandates within and without the state ~~presents~~ present problems ~~which~~ that cannot always be met by individual counties or cities and that local government planning and development efforts can be strengthened when aided by studies ~~and~~, planning, and implementation of both a statewide and regional character.

The legislative assembly further finds that the state has a positive interest in the establishment, preparation, and maintenance of a long-term, continuing, comprehensive planning and development process for the physical, social, and economic development of the state and each of its regions to serve as a guide for activities of state and local governmental units.

It is the purpose of this chapter to establish a consistent, comprehensive statewide policy for planning, economic development, program operations, coordination, and related cooperative activities of state and local governmental units and to enhance the ability of and opportunity for local governmental units to resolve issues and problems transcending their individual boundaries. In furtherance of this purpose, the legislative assembly finds that the governor~~, through the department of economic development and finance,~~ is required to assure orderly and harmonious coordination of state and local plans and programs with federal, state, and regional planning and programming.

SECTION 2. AMENDMENT. Section 54-40.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.1-02. Definitions. In this chapter, unless the context or subject matter otherwise ~~requires~~ require:

1. "City" means any city incorporated under the laws of this state.
2. ~~"Executive officer" means the mayor in council cities or modern council cities and the president of the board of city commissioners in commission cities.~~

~~3.~~ "Governing body" means the city council or the board of city commissioners or the board of county commissioners.

~~4.~~ 3. "Industry" includes agriculture and business.

~~5.~~ 4. "Member-at-large" means a person who represents the general citizenry of the county.

~~6.~~ 5. "Minority group" means any identifiable group of people, regardless of numerical size, whose members are denied or limited in employment, education, or training opportunities because of sex, race, creed, color, religion, national origin, or low income.

~~7. "Office" means the department of economic development and finance.~~

~~8.~~ 6. "Organized local development corporation" means any group organized for the purpose of promoting economic development which has filed for incorporation as such with the secretary of ~~state's office~~ state.

~~9.~~ 7. "Region" means the area delineated by executive order of the governor.

~~10.~~ 8. "Regional comprehensive plan" means a long-range guide for the economic, physical, and social development of a region which identifies regional goals, objectives, and opportunities and embodies the policies of the regional council.

~~11.~~ 9. "Regional council" means the council for comprehensive planning and development established in each region pursuant to section 54-40-08.

~~12.~~ 10. "Units of general local government" means cities, counties, and organized townships.

SECTION 3. AMENDMENT. Section 54-40.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.1-03. Regional council - Membership.

1. Total membership on a regional council must be determined by the participating units of general local government, subject to the following minimum criteria of membership:

   a. A majority of the full regional council membership must be ~~comprised~~ composed of existing elected city officials and county commissioners. Selection of these members must be by their respective governing bodies.

   b. One member of the regional council may represent identifiable and organized minority groups existing in the region. Selection of the member may be made by the minority groups upon invitation from the regional council.

   c. One soil conservation district supervisor from each county must be appointed to the regional council to represent the agricultural and natural resource interests of the region. The appointment of the soil conservation district supervisor must be made by the respective boards of soil conservation districts. If any county ~~should contain~~

contains more than one soil conservation district, either in whole or in part, the concerned boards shall meet and jointly agree upon a single appointment to the regional council.

d. One or more members of the regional council, selected by the local development corporations, shall represent the organized local development corporations existing in the region.

e. The chairman of the regional employment training council or the chairman's designee must be appointed to the regional council.

f. An alternate must be selected for each regular member of the regional council in the same manner as the regular member is selected. The alternate member is to serve on the regional council when the regular member is absent and shall enjoy the same responsibilities and privileges as a regular member enjoys.

2. The term of office of each member of the regional council must be as determined by the regional council and specified in its agreements, rules, or procedures. However, if a person is a member of the regional council as the result of being a member of the governing body of a city or a county, that person's term on the regional council ~~shall expire~~ expires at the same time ~~his~~ that person's term of public office expires and another person must be appointed to the regional council in the same manner as the selection was made for the member whose term expires.

3. Special or standing committees may be appointed to assist and advise the regional council. Members of special or standing committees must be appointed by the regional council. Membership on special or standing committees is not limited to the members of the regional council.

4. The regional council may elect an executive board from the members of the regional council. The executive board shall perform the administrative duties prescribed in the agreements, rules, or procedures of the regional council.

5. The regional council shall determine the rate at which expenses of regional council members and members of any special or standing committees must be paid for expenses incurred in attending meetings of the regional council and the committees and in the performance of their official duties, but the amounts may not exceed the amounts provided by law for state officers.

SECTION 4. AMENDMENT. Section 54-40.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.1-04. Regional council - Powers and duties. A regional council shall:

1. Adopt agreements, rules, or procedures as may be necessary to effectuate planning and development in the region.

2. Coordinate planning and development within the region for all matters of regional concern as determined by the regional council, including land use, social and economic planning, economic development, transportation,

health, environmental quality, water and sewerage, solid waste, flood relief, parks and open spaces, hospitals, and public buildings.

3. Participate with other public agencies and private organizations in regard to research for planning activities relevant to the region.

4. For the purpose of coordination, work with state departments, agencies, and institutions in reviewing and commenting on all plans and federal aid applications as to their impact on the region.

5. Develop guidelines for the coordination of land use plans and ordinances within the region.

6. Prepare a regional comprehensive plan and upon the preparation of such a plan or any phase, amendment, revision, extension, addition, functional part, or part thereof, file such plan, phase, functional part, amendment, revision, extension, addition, or part thereof with the office, all local planning agencies within the region, and other planning agencies in adjoining areas.

7. Develop an annual budget for operations during a fiscal year ~~and submit the budget to participating units of general local government for approval~~.

8. Receive and expend federal, state, and local funds, and contract for services with units of general local government and private individuals and organizations, consistent with the scope and objectives of ~~a~~ planning ~~function~~ and development functions.

9. Upon availability of funds, hire an executive director who must be given full control over the staff of the regional council. The executive director shall act as a liaison between the regional council and the staff of the regional council and shall advise and assist the regional council in the selection of staff.

10. Provide technical assistance for primary sector business development by leveraging local funds to assist in product development, product testing, business plan development, feasibility studies, gaining patent protection, legal services, market strategy development, and other needs to stimulate business development.

11. Host business outreach forums to stimulate entrepreneurship and interchange with potential investment and forums on other matters of importance to the local area.

12. Upon request, facilitate the financing of local economic development activities, such as interest buydown programs and local revolving loan fund programs, without regard to the fiscal source.

13. Act as a regional development corporation as provided by the individual regional council's bylaws.

14. Have authority to purchase, own, and manage real property for the purpose of the business incubator and regional council administrative functions.

SECTION 5. AMENDMENT. Section 54-40.1-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.1-05. Reports. Each regional council shall prepare an annual report within sixty days after the end of each fiscal year. Copies of the report must be submitted to the participating units of general local government, to the governor or ~~his~~ the governor's designee, ~~to the department of economic development and finance,~~ and to members of the legislative assembly in each region. To the extent practicable, the report must include projects completed or in progress and sources of funding.

SECTION 6. AMENDMENT. Section 54-40.1-06 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-06. Dissolution of regional council. A regional council may be dissolved as prescribed in the agreements, rules, or procedures of the regional council. Upon dissolution, all properties of the regional council will be converted to cash or evaluated as to worth and divided among participating units of general local government in proportion to the amount of their financial participation.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 526

SENATE BILL NO. 2049
(Legislative Council)
(Interim Waste Management Committee)

COMPREHENSIVE WASTE MANAGEMENT PLAN

AN ACT to require the office of management and budget to prepare and submit to the governor and the legislative council a comprehensive solid waste management plan for state agencies, departments, and institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Comprehensive solid waste management plan - Submission to the governor and legislative council. By July 1, 1994, the office of management and budget in consultation with the state department of health and consolidated laboratories shall prepare and submit to the governor and the legislative council a comprehensive solid waste management plan that assesses the ability of each state agency, department, and institution to reduce the amount of solid waste it generates and increase the amount of recycled products it uses. The plan must be consistent with the purposes expressed in section 23-29-02.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 527

SENATE BILL NO. 2410
(Senator W. Stenehjem)

JUDICIAL AND LEGISLATIVE BUDGET SUBMISSION

AN ACT to amend and reenact section 54-44.1-13 of the North Dakota Century Code, relating to the date budget requests for the judicial and legislative branches are submitted.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.1-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.1-13. Budget requests for legislative and judicial branches. The budget requests and expenditures for the legislative and judicial branches of this state are not subject to the provisions of this chapter and such budget requests must be submitted directly to the legislative assembly with informational copies of such budgets provided to the director of the budget not later than ~~November eighth for the judicial branch and~~ November fifteenth ~~for the legislative branch~~ in each even-numbered year preceding a session of the legislative assembly.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 528

HOUSE BILL NO. 1391
(Representatives Gerntholz, Clayburgh, Kroeber)
(Senators Lips, Robinson, Yockim)

COMMUNICATIONS, ACCOUNTING, AND RECORDS GRANTS

AN ACT to amend and reenact section 54-44.2-02.5 of the North Dakota Century Code, relating to a grant program to assist counties and cities in developing a communications, uniform accounting, and records maintenance system; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.2-02.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.2-02.5. Accounting and records maintenance grant program. The information services division shall establish a grant program to assist counties and cities in developing a uniform communications, accounting, and records maintenance system. A county or city may apply to the information services division for a grant of up to ~~five~~ fifteen thousand dollars, which must be used for the purchase of communications equipment, data processing equipment, or for contracting for training on the use of ~~data processing~~ the equipment. A county or city awarded a grant under this section shall match or exceed the grant amount with county or city moneys. Any ~~data processing~~ equipment purchased and any training contracted for with funds granted under this section must be approved by the information services division after consultation with the North Dakota association of counties and the North Dakota league of cities. The information services division, after consultation with the North Dakota association of counties and the North Dakota league of cities, shall establish guidelines for the review of grant applications and the distribution of grants. The information services division may expend moneys from this account for purposes of implementing this section. The guidelines must give preference to grant applications that provide for joint facilities and applications among any combination of two or more counties or cities, and for those applications that include a comprehensive technology planning process. Joint grant applications are eligible for an award in an amount equal to the combined amounts of grants that would result if those counties or cities applied separately.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of $250,000, or so much of the sum as may be necessary, to the state treasurer, who shall distribute the moneys to counties and cities as directed by the director of the information services division for the purpose of providing grants under section 1 of this Act for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 529

HOUSE BILL NO. 1028
(Legislative Council)
(Interim Budget Committee on Human Services)

SPECIALIZED TELECOMMUNICATIONS SERVICES

AN ACT to establish a program to provide specialized telecommunications services and equipment to the communications impaired; to provide for a telephone access line surcharge to fund the program; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Administrator" means the individual employed by the division to oversee administration of the program.
2. "Commission" means the public service commission.
3. "Communications impaired" means the condition of an individual who is deaf, hearing impaired, or speech impaired.
4. "Division" means the information services division of the office of management and budget.
5. "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.
6. "Program" means the program established under section 3.
7. "Radio communications access" means the radio access between a customer of a radio communications service provider and the provider.
8. "Radio communications service provider" means a telecommunications company that provides radio communication service or cellular service to members of the general public who are its customers.
9. "Specialized telecommunications equipment" means a device that, when connected to a telephone, enables or assists a person who is communications impaired to communicate with another person utilizing the telephone network. The term may include telecommunications devices for the deaf, amplifiers, and signaling devices.
10. "Telecommunications relay service" means a statewide service through which a communications-impaired individual, using specialized telecommunications equipment, may send and receive messages to and from a noncommunications-impaired individual whose telephone is not equipped with specialized telecommunications equipment and through which a

noncommunications-impaired individual, by using voice communication, may send and receive messages to and from a communications-impaired individual.

11. "Telephone access line" means the facilities between a serving central office and the customer of a local exchange company which are required to provide access to the local and toll network.

SECTION 2. Responsibilities of the administrator. The administrator shall oversee the division's administration of the program. The administrator shall:

1. Review and recommend policies and procedures governing administration of the program and ensure the program is in compliance with any applicable state or federal law or rule;

2. Prepare a budget for administration of services under the program;

3. Monitor the expenditures of funds for the program;

4. Monitor the quality of the program and the satisfaction of the users; and

5. Perform any other duties necessary to oversee administration of the program.

SECTION 3. Program established - Purpose.

1. The division shall establish and administer a program to provide telecommunications relay service to persons who are communications impaired.

2. The program shall provide a telecommunications relay service to allow persons who are communications impaired to communicate via the telecommunications network with noncommunications-impaired persons.

3. The vocational rehabilitation division of the department of human services shall furnish specialized telecommunications equipment to meet the needs of individuals who are communications impaired and who might be otherwise disadvantaged in their ability to obtain such equipment. The vocational rehabilitation division shall determine eligibility and may provide the specialized telecommunications equipment to individuals determined eligible within the limits of funding made available to the vocational rehabilitation division through gifts and grants received under section 6 of this Act and from funding made available by the information services division from the surcharge collected pursuant to section 8 of this Act, which are hereby appropriated.

SECTION 4. Responsibilities of the division. The division shall:

1. Develop rules, policies, and procedures, as may be necessary, to govern administration of the program.

2. Implement the telecommunications relay service as described in subsection 2 of section 3 of this Act by July 26, 1993, to the extent funds generated by the surcharge described in section 10 are available.

3. Perform any other duties necessary to properly administer the program.

SECTION 5. Telecommunications relay service - Requirements.

1. The division shall contract with a qualified provider to design and implement a telecommunications relay service that fulfills the requirement of subsection 2 of section 3 of this Act. The division shall award the contract for this service to the offerer whose proposal is the most advantageous to the state; considering price, the interests of the communications-impaired community in having access to a high quality and technologically advanced telecommunications system, and all other factors listed in the request for proposals.

2. Except in cases of willful misconduct, gross negligence, or bad faith, neither the division nor the provider of the telecommunications relay service, nor the employees of the provider, are liable for any damages or claims for relief arising out of or resulting from the establishment of, participation in, or operation of the telecommunications relay service.

3. The division shall require, under the terms of the contract, that:

   a. The service be available statewide for operation seven days a week, twenty-four hours per day, including holidays, for both interstate and intrastate calls.

   b. The service relay all messages promptly and accurately.

   c. The service maintain the privacy of persons using the system.

   d. The provider preserve the confidentiality of all telephone communications.

   e. The service conform to any standards established by applicable state or federal laws or rules.

SECTION 6. Gifts and grants. The vocational rehabilitation division may accept contributions and gifts and may apply for and accept grants, in money or otherwise, to the program. Monetary contributions, gifts, and grants must be deposited in the state treasury to be credited to the department of human services operating account.

SECTION 7. Telecommunications services account for the communications impaired. The telecommunications services account for the communications impaired consists of all surcharges billed and collected pursuant to section 8. Subject to legislative appropriation, the division may expend moneys from the account for purposes of implementing this Act.

SECTION 8. Telephone access line and radio communications access surcharge.

1. Before May first of each year, the division shall report all cost data and other information to the commission. Each local exchange company and radio communications service provider shall report all information requested by the division in order to determine the number of telephone access lines and radio communications access service numbers. Before June first of each year, the commission shall determine the amount of a surcharge, not to exceed eleven cents per telephone access line per month, based upon available cost data and other information provided by the division, necessary to cover the costs of providing intrastate

telecommunications relay service as provided in section 401 of the federal Americans with Disabilities Act of 1990 [47 U.S.C. 225], including the cost of implementing and administering this Act which includes the provision of specialized equipment to eligible persons, and taking into consideration any surplus in the telecommunications services account. The surcharge is imposed effective on its determination by the commission and must be billed and collected as provided in this Act. The surcharge is subject to section 49-21-01.3. Funding for the interstate portion of the state telecommunications relay service must be provided in a manner consistent with rules and orders adopted by the federal communications commission in implementing the federal Americans with Disabilities Act. The division shall notify each local exchange company and radio communications service provider, in writing, of the amount of the monthly surcharge determined by the commission.

2. Each local exchange company and radio communications service provider shall include and identify the surcharge determined under subsection 1 in its monthly billing for service to a customer of the company or provider.

3. Each customer of a local exchange company or radio communications service provider is liable for payment to the local exchange company or radio communications service provider of any surcharge imposed pursuant to this Act. The local exchange company or radio communications service provider is not liable for any uncollected surcharge, nor does the company have an obligation to take any legal action to enforce the collection of any surcharge that is unpaid by its customers.

4. No customer of a local exchange company may be required to pay the surcharge on more than one hundred telephone access lines per account and no customer of a radio communications service provider may be required to pay the surcharge on more than one hundred radio communications access service numbers per account in this state.

5. Except as provided in subsection 6, a local exchange company or radio communications service provider shall transmit all surcharges billed and collected to the division no later than the last day of the month following the end of the calendar quarter in which the surcharge is collected. The administrator shall remit the surcharges received to the state treasurer. The state treasurer shall deposit all surcharges received in the state treasury to the credit of the telecommunications services account for the communications impaired.

6. Each local exchange company or radio communications service provider may deduct and retain five percent of the total surcharges billed and collected each month to cover its administrative expense in complying with the requirements of subsections 2, 3, 4, and 5.

SECTION 9. Records - Audit. Each local exchange company or radio communications service provider shall maintain a record of the surcharges billed and collected pursuant to section 8 for a period of three years from the date of billing or collection, respectively. The commission may audit each local exchange company's or radio communications service provider's records to assure compliance with this Act.

SECTION 10. APPROPRIATION. There is hereby appropriated out of any moneys in the telecommunications services account for the communications impaired in the state treasury, not otherwise appropriated, the sum of $752,400, or so much of the sum as may be necessary, to the information services division of the office of management and budget for the purpose of implementing this Act for the period beginning with the effective date of this Act and ending June 30, 1995. Of this amount, up to $68,400 must be made available to the vocational rehabilitation division of the department of human services to be matched with $252,100 of federal funds for the provision of specialized equipment to eligible persons, which is hereby appropriated for the period beginning with the effective date of this Act and ending June 30, 1995. The administrator of the program shall provide reports to the budget section of the legislative council regarding the implementation of the telephone access line and radio communications access surcharge, expenditures for specialized telecommunications equipment, and the status of the appropriation.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 1993
Filed April 22, 1993

CHAPTER 530

SENATE BILL NO. 2156
(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

STATE RECORDS RETENTION

AN ACT to amend and reenact section 54-46-08 of the North Dakota Century Code, relating to retention schedules for state records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-46-08 of the North Dakota Century Code is amended and reenacted as follows:

54-46-08. Determination necessary for final disposition of records. Prior to the final disposition of any type or class of record, the administrator, after consultation with the official or department head concerned, the attorney general, the state auditor, and the state archivist, shall determine that the type or class of record has no further administrative, legal, or fiscal value and is subject to final disposition under section 54-46-08.1 or section 54-46-09. If a statute requiring retention of a record does not either provide a specific retention period or specifically provide that the record be permanently retained, the administrator, after completing the consultation required by this section, shall establish a specific retention period for the record. The administrator shall annually survey the state agencies and shall order final disposition under section 54-46-08.1 or section 54-46-09 of any records which have been determined to have no further administrative, legal, or fiscal value pursuant to this section.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 531

SENATE BILL NO. 2118
(Political Subdivisions Committee)
(At the request of the Department of Human Services)

SOCIAL SERVICE RECORD RETENTION

AN ACT to amend and reenact section 54-46-13 of the North Dakota Century Code, relating to state and county social service records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-46-13 of the North Dakota Century Code is amended and reenacted as follows:

54-46-13. Rules for ~~final disposition of certain~~ state and county social service records - Administrator to ~~promulgate~~ adopt. The administrator shall ~~promulgate~~ adopt rules ~~and regulations~~ in accordance with chapter 28-32 for ~~the destruction or other final disposition of~~ state and county social service ~~case files pertaining to work relief and public assistance programs after such files have been closed for a minimum period of six years and shall also promulgate rules and regulations for the destruction of other final disposition of other state and county social service records which are obsolete or have been duplicated~~ records. The rules adopted by the administrator must be consistent with records retention requirements imposed by federal law with respect to those records. The administrator, prior to ~~promulgation~~ adoption, amendment, or repeal of rules ~~and regulations for the destruction of~~ concerning state and county social service ~~files and~~ records, shall consult with the executive director of the department of human services ~~in regard to the destruction of such files and records~~.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 532

HOUSE BILL NO. 1072
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS COMPREHENSIVE CHANGES

AN ACT to create and enact a new section to chapter 54-52 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to continuing appropriations for certain retirement benefits and health insurance benefits; to amend and reenact subsection 18 of section 54-52-01, sections 54-52-02.6, 54-52-03, subsection 8 of section 54-52-04, and sections 54-52-17, 54-52-17.4, and 54-52-26 of the North Dakota Century Code, relating to definitions repurchase of past service, public employees retirement system board authority, public employees retirement system board membership and compensation, purchase of additional credit, payment for prior service, service benefits, consultant fees, and confidentiality of records under the public employees retirement system; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 18 of section 54-52-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18. "Temporary employee" means a governmental unit employee who is not ~~filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration~~ eligible to participate as a permanent employee, who is at least eighteen years old and not actively contributing to another employer sponsored pension fund, and, if employed by a school district, occupies a noncertified teacher's position.

SECTION 2. AMENDMENT. Section 54-52-02.6 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-02.6. Repurchase of past service upon reemployment. An individual who terminates participation in the plan may elect to receive a refund of the member's account balance under subsection 7 of section 54-52-17 and thus forfeit all rights ~~to~~ under the retirement plan ~~benefits~~. An individual upon reemployment may~~, within one hundred eighty days of reemployment,~~ elect to repurchase the forfeited past service for retirement and the retiree health benefits program in accordance with rules established by the board.

SECTION 3. AMENDMENT. Section 54-52-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52-03. Governing authority. A state agency is hereby created to constitute the governing authority of the system to consist of a board of seven persons known as the retirement board. No more than one elected member of the board may be in the employ of a single department, institution, or agency of the state or in the employ of a political ~~subdivisions~~ subdivision. No employee of the

public employees retirement system or the state retirement and investment office may serve on the board.

1. One member of the board must be appointed by the governor to serve a term of five years. The appointee must be a North Dakota citizen who is not a state or ~~school district~~ political subdivision employee and who by experience is familiar with money management. The citizen member is chairman of the board.

2. One member of the board must be appointed by the attorney general from the attorney general's legal staff and shall serve a term of five years.

3. The state health officer appointed under section 23-01-05 is a member of the board.

4. Three board members must be elected by and from among the active participating members. Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board under this subsection. Board members must be elected to a five-year term pursuant to an election called by the board. Notice of board elections must be given to all active participating members. The time spent in performing duties as a board member may not be charged against any employee's accumulated annual or any other type of leave.

5. One board member must be elected by and from among those persons who are receiving retirement benefits or who are eligible to receive deferred vested retirement benefits under this chapter. The board shall call the election and must give prior notice of the election to the persons eligible to participate in the election pursuant to this subsection. The board member shall serve a term of five years.

6. The ~~chairman of the board shall receive fifty dollars per day for the actual time devoted by the chairman to the duties of the chairman's office and each of the other members of the board shall receive an honorarium of fifty dollars for each month during which the board has been in session~~ members of the board are entitled to receive compensation as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. This is in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.

7. A board member shall serve a five-year term and until the board member's successor qualifies. Each board member is entitled to one vote, and four of the seven board members constitute a quorum. Four votes are necessary for resolution or action by the board at any meeting.

SECTION 4. AMENDMENT. Subsection 8 of section 54-52-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. The board ~~annually~~ shall annually report ~~in accordance with section 21-10-06.1~~ the investment performance of the funds that it administers and distribute a copy to each participant.

SECTION 5. AMENDMENT. Section 54-52-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **54-52-17. Formulation of plan.** Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.

2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary is the average salary for the total months of employment.

3. Retirement dates are defined as follows:

   a. Normal retirement date, except for a national guard security officer or firefighter, is:

      (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

      (2) When the member has a combined total of years of service credit and years of age equal to ninety and has not received a retirement benefit under this chapter.

   b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least five consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.

   c. Postponed retirement date, ~~except for a national guard security officer or firefighter,~~ is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after ~~attaining~~ reaching the ~~age of sixty-five years. For a national guard security~~

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[1] NOTE: Section 54-52-17 was also amended by sections 1 and 2 of House Bill No. 1075, chapter 534, and by section 2 of Senate Bill No. 2067, chapter 533.

~~officer or firefighter, postponed retirement date is the first day of the month next following the month in which the national guard security officer or firefighter actually severs or has severed employment after attaining the age of fifty-five years~~ normal retirement date.

d. Early retirement date, except for a national guard security officer or firefighter, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed five years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least five years of eligible employment.

e. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. A member is eligible to receive disability retirement benefits only if the member:

(1) Became disabled during the period of eligible employment; and

(2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board is authorized to pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are hereby appropriated from the retirement fund for those purposes.

4. The board shall calculate retirement benefits as follows:

a. ~~Normal retirement~~ Single life benefits for all retirees, except supreme and district court judges and national guard security officers or firefighters, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

(1) Service benefit equals one and sixty-nine hundredths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals one and sixty-nine hundredths percent of final average salary multiplied by the number of years of prior service employment.

(3) All participants who retired before July 1, 1991, are entitled to benefits calculated at one and sixty-nine hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, 1991.

b. ~~Normal retirement~~ Single life benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:

(1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and one-fourth percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

(2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.

c. ~~Normal retirement~~ Single life benefits for all national guard security officers or firefighters under the public employees retirement system reaching normal retirement date for national guard security officers or firefighters is an annual amount payable monthly comprised of a benefit as defined in this chapter, determined as follows:

(1) Service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of prior service employment.

d. Postponed retirement benefits are calculated as for ~~normal retirement~~ single life benefits for those members who retired on or after July 1, 1977.

e. Early retirement benefits are calculated as for ~~normal retirement~~ single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early retirement benefits only after having completed five years of eligible employment.

f. Disability retirement benefits are twenty-five percent of the member's final average salary. The minimum monthly disability retirement benefit under this section is one hundred dollars.

5. Upon termination of employment after completing five years of eligible employment but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued ~~normal retirement~~ single life benefits.

6. If before retiring a member dies after completing five years of eligible employment, the board shall pay the member's account balance to any beneficiary, other than the member's surviving spouse, designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary, other than the member's surviving spouse under this section, the surviving spouse of the member may select one of the following optional forms of payment:

   a. A lump sum payment of the member's retirement account as of the date of death.

   b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.

   c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued ~~normal~~ single life retirement benefits until the spouse dies.

7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board shall automatically refund a member's account balance if the member has completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.

8. If a member who is receiving retirement benefits or the member's surviving spouse who is receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to such spouse, the member's surviving beneficiary, if any, or the member's estate.

9. The board shall promulgate regulations providing for the receipt of retirement benefits in the following optional forms:

   a. Joint and survivor, with fifty percent or one hundred percent options.

   b. Level social security option, which shall be available only to early retirees.

   c. Life with five-year or ten-year certain options.

   Unless a member requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a ~~lifetime monthly pension~~ single life benefit.

SECTION 6. AMENDMENT. Section 54-52-17.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.4. Purchase of additional credit.

1. A participating member may elect to purchase credit~~, within one hundred eighty days of beginning eligible employment or by December 31, 1991, whichever is later,~~ for years of service and prior service for which the participating member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service:

   a. Active employment in the armed forces of the United States, except as provided in subsection 3, for up to four years credit.

   b. Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter.

   c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.

   d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.

   e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws.

   f. Employment as a permanent employee of a governmental unit not located in North Dakota, except that any such years of out-of-state employment are not eligible for credit in North Dakota if the years claimed also qualify for retirement benefits from an out-of-state retirement system.

2. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:

   a. Except as provided in subsection 4, for up to four years of credit for active employment in the armed forces of the United States.

   b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.

   c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.

~~2.~~ 3. The participating member may purchase credit under this section by paying to the board an amount equal to ~~eight and twelve hundredths percent, times the participating member's monthly salary on the date of the participating member's election to purchase, times the number of months of credit being purchased~~ the actuarial cost to the fund of providing the credit. The participating member shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 ~~one percent times~~

~~the participating member's present monthly salary times the number of months of credit being purchased~~ an amount equal to the actuarial cost to that fund for the additional credit. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. The board shall adopt rules governing the purchase of additional credit under this section.

~~3.~~ 4. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the member's most recent monthly salary, times the number of months of credit being purchased, plus interest at a rate determined by the board. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03 one percent times the member's present monthly salary times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

SECTION 7. AMENDMENT. Section 54-52-26 of the North Dakota Century Code is amended and reenacted as follows:

54-52-26. Confidentiality of records. ~~Information pertaining to a member's retirement account balance, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is~~ All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not ~~a~~ public ~~record. The information~~ records. This section does not prohibit any party from obtaining this information from other agencies or governmental sources. Information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.

SECTION 8. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Retirement benefits - Continuing appropriation. The funds necessary for paying prior service and service benefits, consultant fees, and making withdrawal payments and refunds, are hereby appropriated from the retirement fund for those purposes.

SECTION 9. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Uniform group insurance program benefits - Continuing appropriation. The funds necessary to pay the consulting fees and health insurance benefits related to

the uniform group insurance program are hereby appropriated from insurance premiums received by the board.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 533

SENATE BILL NO. 2067
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

NATIONAL GUARD SECURITY OFFICER AND FIREFIGHTER RETIREMENT BENEFITS

AN ACT to amend and reenact section 54-52-06.2 and subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the employer contribution and retirement benefits for national guard security officers and firefighters under the public employees retirement system; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52-06.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-06.2. Contribution by national guard security officers or firefighters - Employer contribution. Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount ~~equal to five and eighty-seven hundredths percent of the monthly salary of the employee~~ determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

[1] **SECTION 2. AMENDMENT.** Subsection 4 of section 54-52-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The board shall calculate retirement benefits as follows:

   a. Normal retirement benefits for all retirees, except supreme and district court judges ~~and national guard security officers or firefighters~~, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

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[1] NOTE: Section 54-52-17 was also amended by section 5 of House Bill No. 1072, chapter 532, and by sections 1 and 2 of House Bill No. 1075, chapter 534.

(1) Service benefit equals one and sixty-nine hundredths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals one and sixty-nine hundredths percent of final average salary multiplied by the number of years of prior service employment.

(3) All participants who retired before July 1, 1991, are entitled to benefits calculated at one and sixty-nine hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, 1991.

b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:

(1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and one-fourth percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

(2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.

c. ~~Normal retirement benefits for all national guard security officers or firefighters under the public employees retirement system reaching normal retirement date for national guard security officers or firefighters is an annual amount payable monthly comprised of a benefit as defined in this chapter, determined as follows:~~

~~(1) Service benefit equals one and sixty five hundredths percent of final average salary multiplied by the number of years of service employment.~~

~~(2) Prior service benefit equals one and sixty five hundredths percent of final average salary multiplied by the number of years of prior service employment.~~

~~d.~~ Postponed retirement benefits are calculated as for normal retirement benefits for those members who retired on or after July 1, 1977.

~~e.~~ d. Early retirement benefits are calculated as for normal retirement benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early

retirement benefits only after having completed five years of eligible employment.

~~f.~~ e. Disability retirement benefits are twenty-five percent of the member's final average salary. The minimum monthly disability retirement benefit under this section is one hundred dollars.

SECTION 3. APPLICATION OF ACT. This Act applies to benefits payable after June 30, 1993.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 534

HOUSE BILL NO. 1075
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS RETIREMENT AND BENEFITS

AN ACT to create and enact two new sections to chapter 54-52 of the North Dakota Century Code, relating to prior service retiree adjustments under the public employees retirement system; to amend and reenact subdivision a of subsection 3 and subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to normal retirement date for participating members of the public employees retirement system and the computation of benefits under the public employees retirement system; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subdivision a of subsection 3 of section 54-52-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Normal retirement date, except for a national guard security officer or firefighter, is:

(1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

(2) When the member has a combined total of years of service credit and years of age equal to ~~ninety~~ eighty-eight and has not received a retirement benefit under this chapter.

[2] **SECTION 2. AMENDMENT.** Subdivision a of subsection 4 of section 54-52-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Normal retirement benefits for all retirees, except supreme and district court judges and national guard security officers or firefighters, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

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[1] NOTE: Section 54-52-17 was also amended by section 5 of House Bill No. 1072, chapter 532, and by section 2 of Senate Bill No. 2067, chapter 533.

[2] NOTE: Section 54-52-17 was also amended by section 5 of House Bill No. 1072, chapter 532, and by section 2 of Senate Bill No. 2067, chapter 533.

(1) Service benefit equals one and ~~sixty-nine hundredths~~ seven hundred twenty-five thousandths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals one and ~~sixty-nine hundredths~~ seven hundred twenty-five thousandths percent of final average salary multiplied by the number of years of prior service employment.

(3) All participants who retired before ~~July 1, 1991~~ August 1, 1993, are entitled to benefits calculated at one and ~~sixty-nine hundredths~~ seven hundred twenty-five thousandths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning ~~July 1, 1991~~ August 1, 1993.

SECTION 3. AMENDMENT. Subdivision a of subsection 4 of section 54-52-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Normal retirement benefits for all retirees, except supreme and district court judges and national guard security officers or firefighters, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which is determined as follows:

(1) Service benefit equals one and ~~sixty-nine~~ seventy-four hundredths percent of final average salary multiplied by the number of years of service employment.

(2) Prior service benefit equals one and ~~sixty-nine~~ seventy-four hundredths percent of final average salary multiplied by the number of years of prior service employment.

(3) All participants who retired before ~~July 1, 1991~~ January 1, 1994, are entitled to benefits calculated at one and ~~sixty-nine~~ seventy-four hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning ~~July 1, 1991~~ January 1, 1994.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on July 31, 1993, are entitled to receive an increase in benefits equal to two percent of the individual's present benefit, with the increased benefits payable beginning August 1, 1993. A prior service retiree is a former participating employee who receives a supplemental monthly payment from the retirement system based upon the original prior service credit system.

SECTION 5. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on December 31, 1993, are entitled to receive an

increase in benefits equal to one percent of the individual's present benefit, with the increased benefits payable beginning January 1, 1994. A prior service retiree is a former participating employee who receives a supplemental monthly payment from the retirement system based upon the original prior service credit system.

SECTION 6. EFFECTIVE DATE. Sections 3 and 5 of this Act are effective for benefit payments on and after January 1, 1994. However, sections 3 and 5 of this Act do not become effective unless the public employees retirement board determines before January 1, 1994, with the advice of its actuary, that sections 3 and 5 of this Act can be implemented on an actuarially sound basis.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 535

SENATE BILL NO. 2068
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

UNIFORM GROUP INSURANCE PARTICIPATION

AN ACT to amend and reenact subsections 1, 3, 4, and 5 of section 54-52.1-03 and section 54-52.1-03.1 of the North Dakota Century Code, relating to participation in the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 3, 4, and 5 of section 54-52.1-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Any eligible employee may be enrolled in the uniform group insurance program created by this chapter by requesting enrollment with the employing department. If an eligible employee does not enroll in the uniform group insurance program at the time of beginning employment, the eligible employee must meet minimum requirements established by the board to enroll thereafter.

3. ~~Upon the termination of eligible employment of a member of the legislative assembly, or upon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement, will receive a deferred retirement allowance from a department, board, or agency, that employee or that employee's surviving spouse~~ A retiree who has accepted a retirement allowance from the public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF) for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may ~~continue as a member of~~ elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each ~~retired employee and each former member of the legislative assembly or the surviving spouse of that retired employee or former legislative assembly member~~ retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided.

4. Upon the termination of employment where the employee is not ~~a member of the legislative assembly or entitled to either retirement benefits or a deferred retirement allowance~~ eligible to participate under subsection 3 or 5 or applicable federal law, that employee cannot continue as a member of the uniform group ~~unless the employee was on the uniform group insurance retiree billings as of July 1, 1974. However, the employee may continue on an individual basis with the carrier, with such coverage to be offered at the lowest possible rate, to be determined by the board~~.

5. A member or former member of the legislative assembly or that person's surviving spouse may elect to continue membership in the uniform group within the applicable time limitations after either termination of eligible employment as a member of the legislative assembly or termination of other eligible employment or, for a surviving spouse, upon the death of the member or former member of the legislative assembly. The member or former member of the legislative assembly or that person's surviving spouse shall pay the premiums in effect for the coverage provided directly to the board.

SECTION 2. AMENDMENT. Section 54-52.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.1. Certain political subdivisions authorized to join uniform group insurance program - Employer contribution. The board of county commissioners of any county, the governing body of any city or school district, a district health unit, or any combination thereof, may extend the benefits of the uniform group insurance program under this chapter to its permanent employees, subject to minimum requirements established by the board and a minimum period of participation of ~~twenty-four~~ sixty months. If the board of county commissioners of a participating county, the governing body of any participating city or school district, a district health unit, or any combination thereof, withdraws from participation in the uniform group insurance program, before completing sixty months of participation, that entity ~~may not subsequently renew participation for a period of at least twenty-four months from the date of withdrawal~~ shall make payment to the board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the entity's employees as determined under rules adopted by the board. The boards of county commissioners of participating counties and the governing bodies of participating cities or school districts, district health units, or any combinations thereof may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 536

SENATE BILL NO. 2066
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

RETIREE HEALTH BENEFITS FUND

AN ACT to amend and reenact subdivision a of subsection 1 of section 54-52.1-03.2 and subsection 2 of section 54-52.1-03.3 of the North Dakota Century Code and section 4 of chapter 627 of the 1991 Session Laws of North Dakota, relating to investment of the retiree health benefits fund and to calculation of the allowable monthly credit toward hospital and medical benefits coverage under the retiree health benefits fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 54-52.1-03.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended ~~under subsection 6 of section 54-52-04~~.

SECTION 2. AMENDMENT. Section 4 of chapter 627 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 4. AMENDMENT. Subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and three percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52. The board, as trustee of the fund and in exclusive control of its administration, shall:

a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended ~~under subsection 6 of section 54-52-04~~.

b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

SECTION 3. AMENDMENT. Subsection 2 of section 54-52.1-03.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to four dollars and fifty cents multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system, the public employees retirement system, the retirement program established by job service North Dakota under section 52-11-01, or the judges retirement program established under chapter 27-17. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four. For a member of the retirement program established by job service North Dakota under section 52-11-01 receiving an early retirement benefit or a discontinued service annuity under the plan provisions of that retirement program or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment prior to attaining the age of sixty-four.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 537

SENATE BILL NO. 2251
(Senators Mathern, Scherber, Wogsland)
(Representatives Mahoney, Rydell, Ness)

UNIFORM GROUP INSURANCE FOR POLITICAL SUBDIVISION EMPLOYEES

AN ACT to amend and reenact section 54-52.1-03.4 of the North Dakota Century Code, relating to participation by employees of political subdivisions in the uniform group insurance program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-03.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.4. Participation by employees of certain political subdivisions and **temporary employees.** An employee of a county, city, school district, district health unit, or park district that is not participating in the uniform group insurance program pursuant to section 54-52.1-03.1 and is not eligible for any other employee group health plan may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements established by the board. The board may use risk adjusted premiums for individual insurance contracts to implement the provisions of this section allowing employees of a county, city, school district, district health unit, or park district to participate in the uniform group insurance program. The county, city, school district, district health unit, or park district employee participating in the uniform group insurance program under this section shall pay monthly to the board the premiums in effect for the coverage being provided. A temporary employee may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements of the program. The temporary employee shall pay monthly to the board the premiums in effect for the coverage being provided. A political subdivision, department, board, or agency may not make a contribution for ~~this~~ coverage under this section. The board may employ one additional employee to implement the provisions of this section relating to participation by employees of a county, city, school district, district health unit, or park district in the uniform group insurance program.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys received by the North Dakota public employees retirement system board in the form of insurance premiums, not otherwise appropriated, the sum of $75,000, or so much of the sum as may be necessary, to the North Dakota public employees retirement system board for the purpose of administering the provisions of this Act for the biennium beginning July 1, 1993, and ending June 30, 1995.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 538

SENATE BILL NO. 2070
(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

STATE DEFERRED COMPENSATION PLAN ADMINISTRATION

AN ACT to create and enact a new section to chapter 54-52.2 of the North Dakota Century Code, relating to administration of the deferred compensation plan for public employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-52.2 of the North Dakota Century Code is created and enacted as follows:

Deferred compensation program - Board authority.

1. The board shall adopt rules necessary to implement this chapter and to manage the deferred compensation plan subject to the limitations of this chapter.

2. The board shall do all things necessary to preserve the tax-exempt status of the plan.

3. All providers must be authorized to do business in this state and all agents of providers must be licensed by the appropriate licensing authority or authorities in this state.

4. To continue to participate in the program, each provider must report annually, in a form and manner specified by the board, information related to their products, administrative and management fees, contract and maintenance charges, withdrawal penalties, market rating, and such other information the board may require.

5. The board may suspend participation of any provider that does not meet the requirements of this chapter or the rules adopted by the board.

6. The board has the authority to establish a deferred compensation advisory committee which shall include active providers who have signed a provider administrative agreement with the state of North Dakota deferred compensation plan.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 539

HOUSE BILL NO. 1295
(Representatives Brodshaug, Stenehjem)
(Senator Scherber)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to amend and reenact section 54-56-01 of the North Dakota Century Code, relating to the membership of the children's services coordinating committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-56-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **54-56-01. Children's services coordinating committee - Membership.** The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the director of job service North Dakota, the director of the department of corrections and rehabilitation, or a designee of the director of the department of corrections and rehabilitation, the director of the office of management and budget, or a designee of the director of the office of management and budget, the director of vocational education, the chairperson of the governor's committee on children and youth or that chairperson's designee, a representative of the Indian affairs commission, a designee of the chief justice, and a member at large to be appointed by the governor. The governor or the governor's designee shall act as chairperson.

Approved March 22, 1993
Filed March 23, 1993

[1] NOTE: Section 54-56-01 was also amended by section 17 of House Bill No. 1156, chapter 62.

CHAPTER 540

SENATE BILL NO. 2086
(Judiciary Committee)
(At the request of the Office of Administrative Hearings)

ADMINISTRATIVE HEARINGS OFFICE JURISDICTION AND COMPENSATION

AN ACT to amend and reenact sections 54-57-03 and 54-57-07 of the North Dakota Century Code, relating to the jurisdiction of the office of administrative hearings and compensation for providing hearing officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-57-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-57-03. Hearings before administrative hearings officers.

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all hearings of administrative agencies under chapter 28-32, except hearings conducted by the public service commission, the industrial commission, the commissioner of insurance, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the commissioner of labor, except investigatory hearings under section 28-32-08 and ~~except~~ rulemaking hearings held in accordance with section 28-32-02, must be conducted by the office of administrative hearings in accordance with the administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapters 12-56.1 and 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; ~~education of the handicapped act~~ individuals with disabilities education act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

2. The agency head shall make a written request to the director requesting the designation of a hearings officer for each administrative hearing to be held. An agency may request a hearings officer to be designated to preside over the entire administrative proceeding. If a statute so requires, an agency shall, or unless a statute prohibits, an agency may, request that the hearings officer designated issue the final order in the matter. Informal disposition of an administrative proceeding may be made by an agency at any time before or after the designation of a hearings officer from the office of administrative hearings.

3. If a party to an administrative proceeding is in default, prior to the hearing, the agency may issue a default order and a written notice of default, including a statement of the grounds for default. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the hearings officer, if one has been assigned. After service of the default notice and order, ~~the agency may conduct further proceedings~~ if a hearing is necessary to complete the administrative action with or without the participation of the party in default, ~~and with or without~~ a hearings officer from the office of administrative hearings ~~presiding~~ must preside. ~~The agency shall determine all the issues involved.~~

4. When assigning administrative hearings officers to conduct administrative hearings or to preside in an administrative proceeding, the director shall attempt to assign a hearings officer having expertise in the subject matter to be dealt with.

5. The director of administrative hearings may assign an administrative hearings officer to preside in an administrative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, to any tribal government in this state, to the judicial branch, or to any agency to conduct a rulemaking hearing.

SECTION 2. AMENDMENT. Section 54-57-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-57-07. Compensation for provision of hearings officers - Special fund established - Continuing appropriation.

1. The office of administrative hearings may require payment for services rendered by any administrative hearings officer provided by it to any agency, ~~or~~ to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment may include payment for support staff necessary to render hearings officer services. General fund moneys may not be used for payment by state agencies pursuant to this subsection except for those payments required of the department of human services and the state department of health and consolidated laboratories. Moneys received by the office of administrative hearings in payment for providing an administrative hearings officer to conduct an administrative hearing and related proceedings must be deposited into the operating fund of the office of administrative hearings.

2. The office of administrative hearings may require payment for mileage, meals, and lodging in connection with services rendered by an administrative hearings officer provided to any agency, or any unit of local government, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment for meals and lodging must be in the amounts allowable under section 44-08-04. Payment for mileage when using state vehicles must be in amounts set for user charges under section 24-02-03.5. All

other payments must be in amounts allowed for other state officials and employees. Either general fund or special fund moneys, or other income, may be used for the payment of mileage, meals, and lodging under this subsection.

3. A special fund is established in the state treasury and designated as the administrative hearings fund. The director of administrative hearings shall deposit in the fund all moneys received by the office of administrative hearings in payment for providing temporary administrative hearings officers to conduct administrative hearings and related proceedings under this chapter, as well as all moneys received by the office in payment for mileage, meals, and lodging in connection with providing any administrative hearings officer to conduct an administrative hearing and related proceedings. The moneys in the fund are a standing and continuing appropriation and are appropriated, as necessary, for the following purposes:

   a. For the director of administrative hearings to contract with and make payment to temporary administrative hearings officers, as necessary, for the purpose of providing requested administrative hearings officers to agencies or any unit of local government.

   b. For the director of administrative hearings to pay mileage, meals, and lodging to any hearings officers, as necessary, in connection with the services to be provided by this chapter.

Approved March 30, 1993
Filed April 1, 1993

TAXATION

CHAPTER 541

SENATE BILL NO. 2448
(Senator Wogsland)
(Representatives Nicholas, Thorpe)

TAX PAYMENTS BY IMMEDIATE MEANS

AN ACT to create and enact a new subsection to section 57-01-02 of the North Dakota Century Code, relating to authorizing the tax commissioner to require payments of one hundred thousand dollars or more due on a return, report, or other document to be paid by a method in which the funds are immediately available to the state, requiring a taxpayer to provide the tax commissioner with evidence of the payment, providing for penalties and interest on late payments, authorizing the tax commissioner to adopt rules necessary for the administration of this payment method; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-01-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

a. May require, consistent with the cash management policies of the office of management and budget, that any taxpayer owing one hundred thousand dollars or more in connection with any return, report, or other document to be filed with the commissioner shall pay the tax liability to the state no later than the date the payment is required by law to be made in funds which are immediately available to the state on the date of payment. Payment in immediately available funds may be made by wire transfer of funds through the federal reserve system or by any other means established by the commissioner which ensures the availability of the funds to the state on date of payment. Evidence of the payment must be furnished to the commissioner on or before the due date of the tax as established by law. Failure to timely make the payment in immediately available funds or failure to provide evidence of payment in a timely manner subjects the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. If payment is timely made in other than immediately available funds, penalty and interest must be added to the amount of tax due from the due date of the tax payment to the date that funds from the tax payment become available to the state.

b. May establish by rule periodic filing and payment dates that are subsequent to the dates otherwise established by law for any taxes collected by the commissioner in those instances where the commissioner deems it to be in the best interest of the state, provided that the alternative date may not be later than the last day of the month in which the tax was otherwise due.

c. May adopt rules necessary for the administration of this subsection.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 542

SENATE BILL NO. 2288
(Senators Tomac, Thane)
(Representatives Dalrymple, Hokana, Timm)

POLLUTION ABATEMENT TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for the value of pollution abatement improvements to certain buildings or facilities; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-02-08 of the 1992 Special Supplement to the North Dakota Century Code is created and enacted as follows:

a. A pollution abatement improvement. As used in this subsection, "pollution abatement improvement" means property, exclusive of land and improvements to the land such as ditching, surfacing, and leveling, that is:

(1) Part of an agricultural or industrial facility which is used for or has for its ultimate purpose, the prevention, control, monitoring, reducing, or eliminating of pollution by treating, pretreating, stabilizing, isolating, collecting, holding, controlling, measuring, or disposing of waste contaminants; or

(2) Part of an agricultural or industrial facility and required to comply with local, state, or federal environmental quality laws, rules, regulations, or standards.

b. The exemption under this subsection applies only to that portion of the valuation of property attributable to the pollution abatement improvement on which construction or installation was commenced after December 31, 1992, and does not apply to the valuation of any property that is not a necessary component of the pollution abatement improvement. The governing body of the city, for property within city limits, or the governing board of the county, for property outside city limits, shall determine whether the property proposed for exemption is a pollution abatement improvement and may grant an exemption for the pollution abatement improvement based upon the requirements of this subsection.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 543

HOUSE BILL NO. 1103
(Representative Tollefson)

STATE LAND LEASE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for certain property leased from the state for pasture or grazing purposes or upon which the state makes payments in lieu of taxes; to amend and reenact subsection 1 of section 57-02-26 and section 57-02.3-01 of the North Dakota Century Code, relating to the taxable status of, and payments in lieu of taxes on, certain property leased from the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-02-08 of the 1992 Special Supplement to the North Dakota Century Code is created and enacted as follows:

The leasehold interest in property owned by the state which has been leased for pasture or grazing purposes or upon which payments in lieu of property taxes are made by the state.

SECTION 2. AMENDMENT. Subsection 1 of section 57-02-26 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes or upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same.

SECTION 3. AMENDMENT. Section 57-02.3-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02.3-01. Definition. As used in this chapter, unless the context or subject matter otherwise clearly indicates, "property subject to valuation" means real property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained after January 1, 1980, by foreclosure or deed in lieu of foreclosure of a mortgage given to the Bank of North Dakota, including a mortgage assigned to the state treasurer under section 54-30-02. "Property subject to valuation" also means real property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained on or before January 1, 1980, and which is leased to a leaseholder who uses the property for growing hay or crops.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 544

HOUSE BILL NO. 1127
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

PERMANENT AND TOTAL DISABILITY

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to the definition of a permanent and totally disabled person for property tax credit purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.**

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a licensed physician ~~selected~~ approved by the local governing body, with an income of thirteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on the homestead as defined in section 47-18-01, except that this exemption applies to any person who otherwise qualifies under the provisions of this subsection regardless of whether the person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled must be determined according to the following schedule:

   a. If the person's income is not in excess of seven thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.

   b. If the person's income is in excess of seven thousand dollars and not in excess of eight thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up

[1] NOTE: Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2360, chapter 545.

to a maximum reduction of one thousand six hundred dollars of taxable valuation.

c. If the person's income is in excess of eight thousand five hundred dollars and not in excess of ten thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

d. If the person's income is in excess of ten thousand dollars and not in excess of eleven thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.

e. If the person's income is in excess of eleven thousand five hundred dollars and not in excess of thirteen thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case may a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection may not reduce the liability of any person for special assessments levied upon any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed thirteen thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars including the value of any assets divested within the last three years. The term "dependent" includes the spouse, if any, of the person claiming the exemption. The assessor shall attach the statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate at the end of the taxable year of the death of the applicant.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a licensed physician ~~selected~~ approved by the local governing body, with an income of thirteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in

excess of four percent of the person's annual income, but the refund may not be in excess of two hundred thirty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case may this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

3. All forms necessary to effectuate this section must be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.

4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes.

5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may receive any property tax credit under this section.

6. For the purposes of this section, "permanently and totally disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 545

SENATE BILL NO. 2360
(Senators Holmberg, Kelly, Maxson, Robinson)
(Representatives C. Carlson, Kroeber)

AGED AND DISABLED PROPERTY TAX CREDITS

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to property tax credits for persons with limited income who are sixty-five years of age or over or permanently and totally disabled; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.**

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of thirteen thousand <u>five hundred</u> dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on the homestead as defined in section 47-18-01, except that this exemption applies to any person who otherwise qualifies under the provisions of this subsection regardless of whether the person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled must be determined according to the following schedule:

   a. If the person's income is not in excess of seven thousand <u>five hundred</u> dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.

   b. If the person's income is in excess of seven thousand <u>five hundred</u> dollars and not in excess of ~~eight~~ <u>nine</u> thousand ~~five hundred~~ dollars, a reduction of eighty percent of the taxable valuation of the

[1] NOTE: Section 57-02-08.1 was also amended by section 1 of House Bill No. 1127, chapter 544.

person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.

c. If the person's income is in excess of ~~eight~~ nine thousand ~~five hundred~~ dollars and not in excess of ten thousand five hundred dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

d. If the person's income is in excess of ten thousand five hundred dollars and not in excess of ~~eleven~~ twelve thousand ~~five hundred~~ dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.

e. If the person's income is in excess of ~~eleven~~ twelve thousand ~~five hundred~~ dollars and not in excess of thirteen thousand five hundred dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case may a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection may not reduce the liability of any person for special assessments levied upon any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed thirteen thousand five hundred dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars including the value of any assets divested within the last three years. The term "dependent" includes the spouse, if any, of the person claiming the exemption. The assessor shall attach the statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate at the end of the taxable year of the death of the applicant.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of thirteen thousand five hundred dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of ~~his~~ the person's income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty

percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred ~~thirty~~ forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case may this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

3. All forms necessary to effectuate this section must be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.

4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes.

5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may receive any property tax credit under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1994.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 546

SENATE BILL NO. 2261
(Senators Lindgren, Dotzenrod)
(Representatives Kretschmar, Brodshaug)

SPECIAL ASSESSMENT HOMESTEAD CREDIT

AN ACT to amend and reenact subsection 1 of section 57-02-08.3 of the North Dakota Century Code, relating to the homestead credit for special assessments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-02-08.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any person who has qualified for the property tax credit provided for in section 57-02-08.1 may elect to also qualify for an additional homestead credit against that person's homestead for the portion of any special assessment levied by a ~~city under title 40 that~~ taxing district which becomes due for the same year. The total amount of credits allowed for any one property must not exceed six thousand dollars excluding any interest charged by the body levying the special assessment. This credit shall be granted only at the election of the qualifying person. The person making the election shall do so by filing with the county auditor a claim for the special assessment credit on a form prescribed by the tax commissioner. The claim shall be filed with the county auditor on or before February first of the year in which the special assessment installment thereof becomes payable.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 547

SENATE BILL NO. 2482
(Senators Grindberg, Lindgren, Nalewaja, Redlin)
(Representatives Austin, Carlisle)

COUNTY BOARD OF EQUALIZATION MEETINGS

AN ACT to amend and reenact section 57-12-01 of the North Dakota Century Code, relating to the time of meetings of the county board of equalization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-12-01 of the North Dakota Century Code is amended and reenacted as follows:

57-12-01. Membership of board - Meeting - Required attendance of certain officials. The board of county commissioners shall meet ~~on~~ within the first ~~Tuesday in~~ ten days of June of each year and shall constitute a board of equalization of the assessments made within the county. The chairman of the board shall preside. The county board of equalization shall conduct a continuous day-to-day meeting, not to include Saturdays, Sundays, or legal holidays, until it has completed all duties prescribed by this chapter. The first order of business shall be the equalization of assessments of property assessed by city boards of equalization. The second order of business shall be the equalization of assessments of property assessed by township boards of equalization. The chairman of each city board of equalization, or his appointed representative, and each city assessor shall be present at such meeting during the first order of business. The chairman of each township board of equalization, or his appointed representative, and each township assessor shall be present at such meeting during the second order of business. Each person required by this section to attend the meeting of the county board of equalization shall be compensated at a rate not to exceed ten dollars per day for each day actually and necessarily spent in attendance at such meeting plus the same mileage and expenses as are authorized for subdivision employees and officials. Such per diem and expenses shall be paid by the city or township in the same manner as other city or township expenses are paid.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 548

SENATE BILL NO. 2024
(Legislative Council)
(Advisory Commission on Intergovernmental Relations)

POLITICAL SUBDIVISION OPTIONAL LEVIES

AN ACT providing optional property tax levy increase authority for political subdivisions and providing limitations on that authority; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.

2. For purposes of this section, "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.

3. For taxable year 1993, a taxing district may elect to levy at most three percent more than the amount levied in dollars in the base year. For taxable year 1994, a taxing district may elect to levy at most two percent more than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before adding the increase, the dollar amount levied in the base year must be:

   a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year.

   b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.

   c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied under this subsection.

5. In addition to any other increase under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.

6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:

   a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.

   b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.

7. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.

8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1992, and is thereafter ineffective.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 549

HOUSE BILL NO. 1424
(Representatives Kroeber, Wardner)
(Senators Heinrich, Holmberg)

SCHOOL FUND TRANSFERS

AN ACT to amend and reenact subsection 3 of section 57-15-14.2 of the North Dakota Century Code, relating to the transfer of school district general funds and state school aid funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-15-14.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All proceeds of any levy established pursuant to this section shall be placed in the school district's general fund account and may be expended to achieve the purposes for which the taxes authorized by this section are levied. Proceeds from levies established pursuant to this section and funds provided to school districts pursuant to chapter 15-40.1 may not be transferred to the building fund within the school district.

Approved April 2, 1993
Filed April 2, 1993

CHAPTER 550

HOUSE BILL NO. 1034
(Legislative Council)
(Interim Education Committee)

SCHOOL BUILDING FUNDS FOR INSURANCE

AN ACT to amend and reenact subsection 1 of section 57-15-17 of the North Dakota Century Code, relating to the use of school building funds for certain insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 1 of section 57-15-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. a. All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources, ~~shall~~ must be placed in a separate fund known as a school building fund, and ~~shall~~ must be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal or state-chartered savings and loan associations within the limits of federal insurance.

   b. The funds ~~shall~~ may only be used ~~solely and exclusively~~ for any of the following purposes:

      (1) The erection of new school buildings, or additions to old school buildings, or the making of major repairs to existing buildings.

      (2) The payment of rentals upon contracts with the state board of public school education.

      (3) The payment of rentals upon contracts with municipalities for vocational education facilities financed pursuant to chapter 40-57.

      (4) Within the limitations of school plans as provided in subsection 2 of section 57-15-16.

      (5) The payment of principal, premium, if any, and interest on bonds issued pursuant to subsection 7 of section 21-03-07.

      (6) The payment of premiums for fire and allied lines, liability, and multiple peril insurance on any building and its use, occupancy, fixtures, and contents.

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[1] NOTE: Subsection 1 of section 57-15-17 was also amended by section 1 of Senate Bill No. 2176, chapter 551.

c. The custodian of the funds ~~shall be paid~~ may pay out ~~by the custodian thereof~~ the funds only upon order of the school board, signed by the president and the business manager of the school district~~, and the~~. The order must recite upon its face the purpose for which payment is made.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 551

SENATE BILL NO. 2176
(Education Committee)
(At the request of the Superintendent of Public Instruction)

SCHOOL BUILDING FUND USE FOR INSURANCE

AN ACT to amend and reenact subsection 1 of section 57-15-17 of the North Dakota Century Code, relating to school district use of building funds for certain insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 1 of section 57-15-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. a. All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources, ~~shall~~ must be placed in a separate fund known as a school building fund, and ~~shall~~ must be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal or state-chartered savings and loan associations within the limits of federal insurance.

   b. The funds ~~shall~~ may only be used ~~solely and exclusively~~ for ~~any of~~ the following purposes:

      (1) The erection of new school buildings or facilities, or additions to old school buildings or facilities, or the making of major repairs to existing buildings or facilities, or improvements to school land and site. For purposes of this paragraph, facilities may include parking lots, athletic complexes, or any other real property owned by the school district.

      (2) The payment of rentals upon contracts with the state board of public school education.

      (3) The payment of rentals upon contracts with municipalities for vocational education facilities financed pursuant to chapter 40-57.

      (4) Within the limitations of school plans as provided in subsection 2 of section 57-15-16.

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[1] NOTE: Subsection 1 of section 57-15-17 was also amended by section 1 of House Bill No. 1034, chapter 550.

(5) The payment of principal, premium, if any, and interest on bonds issued pursuant to subsection 7 of section 21-03-07.

(6) The payment of premiums for fire and allied lines, liability, and multiple peril insurance on any building and its use, occupancy, fixtures, and contents.

c. The custodian of the funds ~~shall be paid~~ may pay out ~~by the custodian thereof~~ the funds only upon order of the school board, signed by the president and the business manager of the school district~~, and the~~. The order must recite upon its face the purpose for which payment is made.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 552

SENATE BILL NO. 2060
(Senators Yockim, Goetz)
(Representatives Mahoney, Torgerson)

REDEMPTION NOTICE FOR SEVERED MINERALS

AN ACT to amend and reenact subsections 3 and 5 of section 57-27-02 of the North Dakota Century Code, relating to an exception to the notice of redemption provisions for owners of certain severed mineral interests; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 57-27-02 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Within ten days after a request by the county auditor, the register of deeds and the clerk of the district court shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property except a person whose only interest is in a mineral interest that was severed from the surface estate before the filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax sale certificate issued or deemed to have been issued relates, upon whom the notice of the expiration of the period of redemption must be served.

5. The county auditor shall serve the notice of the expiration of the period of redemption upon each mortgagee, lienholder, and other person with an interest in the property except a person whose only interest is in a mineral interest that was severed from the surface estate before the filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax sale certificate issued or deemed to have been issued relates, and upon whom personal service is not required by this section, as shown by the records of the register of deeds or the clerk of the district court of the county. The notice must be served by registered mail.

SECTION 2. EFFECTIVE DATE. This Act is effective for any notice of expiration of the period of redemption served after June 30, 1993.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 553

SENATE BILL NO. 2189
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

TAX LIABILITY AND LIENS

AN ACT to create and enact two new sections to chapter 57-36, two new sections to chapter 57-43.1, and two new sections to chapter 57-43.2 of the North Dakota Century Code, relating to corporate officer liability and tax liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Corporate officer liability. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

SECTION 2. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Lien of tax - Collection - Action authorized.

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section the words "due" and "due and payable" mean the first instant at which the tax becomes due.

3. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the

lien with the register of deeds of the county in which the property is located.

4. The register of deeds of each county shall prepare and keep in the register of deed's office a book known as "index of tax liens", so ruled as to show in appropriate columns all of the following data, under the names of taxpayers, arranged alphabetically:

   a. The name of the taxpayer.

   b. The name "state of North Dakota" as claimant.

   c. The time notice of lien was received.

   d. The date of notice.

   e. The amount of lien when due.

   f. The date of satisfaction.

   The register of deeds shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the index book and the lien is effective from the time of indexing.

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

6. Upon payment of a tax as to which the commissioner has filed notice with the register of deeds, the commissioner shall file with the register of deeds a satisfaction of tax and the register of deeds shall enter the satisfaction on the notice on file and indicate the fact on the index.

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

8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

SECTION 3. A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

Corporate officer liability. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

SECTION 4. A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

Lien of tax - Collection - Action authorized.

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.

3. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the register of deeds of the county in which the property is located.

4. The register of deeds of each county shall prepare and keep in the register of deed's office a book known as "index of tax liens", so ruled as to show in appropriate columns all of the following data, under the names of taxpayers, arranged alphabetically:

   a. The name of the taxpayer.

   b. The name "state of North Dakota" as claimant.

   c. The time notice of lien was received.

   d. The date of notice.

   e. The amount of lien when due.

   f. The date of satisfaction.

   The register of deeds shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the index book and the lien is effective from the time of indexing.

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

6. Upon payment of a tax as to which the commissioner has filed notice with the register of deeds, the commissioner shall file with the register of

deeds a satisfaction of tax and the register of deeds shall enter the satisfaction on the notice on file and indicate the fact on the index.

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

8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

SECTION 5. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Corporate officer liability. If a corporation holding a license issued under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making, such returns and payments is personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter for the assessment and collection of other liabilities.

SECTION 6. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Lien of tax - Collection - Action authorized.

1. When a taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the tax, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the tax, is a lien in favor of the state of North Dakota upon all property and rights to property, whether real or personal, belonging to the taxpayer, and in the case of property in which a deceased taxpayer held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivors to the extent of the deceased taxpayer's interest therein, which interest is determined by dividing the value of the entire property at the time of the taxpayer's death by the number of joint tenants or persons interested therein.

2. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this section, the words "due" and "due and payable" mean the first instant at which the tax becomes due.

3. To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the register of deeds of the county in which the property is located.

4. The register of deeds of each county shall prepare and keep in the register of deed's office a book known as "index of tax liens", so ruled as to show in appropriate columns all of the following data, under the names of taxpayers, arranged alphabetically:

   a. The name of the taxpayer.

   b. The name "state of North Dakota" as claimant.

   c. The time notice of lien was received.

   d. The date of notice.

   e. The amount of lien when due.

   f. The date of satisfaction.

   The register of deeds shall endorse on each notice of lien the day, hour, and minute when received and preserve the same, and shall index the notice in the index book and the lien is effective from the time of indexing.

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

6. Upon payment of a tax as to which the commissioner has filed notice with the register of deeds, the commissioner shall file with the register of deeds a satisfaction of tax and the register of deeds shall enter the satisfaction on the notice on file and indicate the fact on the index.

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

8. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 554

SENATE BILL NO. 2075
(Finance and Taxation Committee)
(At the request of the State Treasurer)

ESTATE TAX SMALL DISTRIBUTIONS

AN ACT to amend and reenact subsection 2 of section 57-37.1-08 of the North Dakota Century Code, relating to distribution of estate taxes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-37.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Following the end of each calendar quarterly period, the state treasurer shall pay over to the county treasurer of the appropriate county, for its general fund, the amount of tax collected on the transfer of the property in that county. If any part of the decedent's property at the time of decedent's death had a legal situs within the limits of a city, the share of tax based on such property must be divided by the state treasurer between the city and the county in proportion to their respective mill levies, except school levies, for the calendar year preceding the year of death. If any part of decedent's property had a legal situs outside the limits of a city, the share of tax based on said property must go entirely to the county. If the tax determined to be due pursuant to this chapter is in an amount which is one hundred dollars or less, no further apportionment pursuant to this section may be made and the entire amount due must be distributed to a county or counties in which the legal situs of the property is located for their general fund. ~~Any distributive share in an amount less than ten dollars, and which has been calculated by the state treasurer pursuant to the provisions of this section, must be paid to the state general fund and may not be distributed as otherwise provided for in this section.~~

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

Approved February 16, 1993
Filed February 16, 1993

CHAPTER 555

HOUSE BILL NO. 1429
(Representatives Timm, Belter, Hokana)
(Senators Nelson, Kelsh)

ALTERNATIVE FUEL CONVERSION CREDIT

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to an income tax credit for equipment to convert motor vehicles to alternative fuel; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Income tax credit for alternative fuel motor vehicle conversion equipment.

1. Any taxpayer filing a North Dakota income tax return on which tax liability is determined under section 57-38-29 or 57-38-30 may claim a credit for the taxable year as provided in this section for the cost of equipment used to convert a North Dakota licensed motor vehicle to operate on alternative fuel.

2. The credit for the cost of equipment used to convert a motor vehicle to operate on alternative fuel is as follows:

   a. For a motor vehicle with a gross vehicle weight of ten thousand pounds [4535.92 kilograms] or less, ten percent of the cost up to a maximum credit per vehicle of two hundred dollars; and

   b. For a motor vehicle with a gross vehicle weight of more than ten thousand pounds [4535.92 kilograms], ten percent of the cost up to a maximum credit per vehicle of five hundred dollars.

3. For purposes of this section:

   a. "Alternative fuel" means natural gas, compressed natural gas, liquefied petroleum gas, liquefied natural gas, hydrogen, electricity, and any other fuel if at least eighty-five percent of the fuel is methanol, ethanol, any other alcohol, ether, or any combination thereof.

   b. "Equipment used to convert a motor vehicle to operate on alternative fuel" means any equipment that modifies a motor vehicle so that the vehicle may be propelled by alternative fuel. The original use of the equipment must commence with the taxpayer and must satisfy any applicable federal or state environmental standards.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

SECTION 3. EXPIRATION DATE. This Act is effective through December 31, 1997, and after that date is ineffective.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 556

SENATE BILL NO. 2311
(Senators Nalewaja, Tennefos, Grindberg)
(Representatives Gulleson, Kerzman, Ness)

LONG-TERM CARE INSURANCE CREDIT

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to an income tax credit for premiums paid for long-term care insurance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Credit for premiums for long-term care insurance coverage. A credit against an individual's tax liability under this chapter is hereby provided to each taxpayer in the amount of twenty-five percent of any premiums paid by the taxpayer for long-term care insurance coverage for the taxpayer or the taxpayer's spouse, parent, or stepparent. The credit for each policy purchased under this chapter may not exceed one hundred dollars in any taxable year.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 557

HOUSE BILL NO. 1061
(Representative Svedjan)

INCOME TAX CREDIT FOR OTHER STATES' TAXES

AN ACT to amend and reenact subsection 1 of section 57-38-40 of the North Dakota Century Code, relating to an extension of the time for claiming a credit or refund of income taxes paid to another state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-40 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this section, a person may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires last.

   a. As to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, if the period for assessment remains open under subsection 2 of section 57-38-38, the period of time for filing of a claim for credit or refund will remain open for the same period prescribed in subsection 2 of section 57-38-38.

   b. An individual who filed a return of income as a resident of this state and is assessed tax by another state or territory of the United States or the District of Columbia on that income after the time for filing a claim has expired under this section is entitled to a credit or refund for the amount of tax paid to the other jurisdiction, not including penalty or interest, as provided under subsection 2 or 6 of section 57-38-04 or subsection 7 of section 57-38-30.3, notwithstanding the time limitations of this section. The claim for the credit or refund under this subdivision must be submitted to the commissioner within one year from the date the taxes were paid to the other jurisdiction. The taxpayer must submit sufficient proof to show entitlement to a credit or refund under this subdivision.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 558

HOUSE BILL NO. 1126
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

INCOME TAX NONFILER PENALTIES

AN ACT to create and enact a new subdivision to subsection 2 of section 57-38-45 and a new subsection to section 57-38-45 of the North Dakota Century Code, relating to penalties for delinquent income withholding tax returns and payments and imposition of a penalty on corporations for failing to file income tax returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 57-38-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

An employer, required to file returns under subsection 1 of section 57-38-60, with four to eight delinquent original tax returns or payments is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater. An employer with nine or more delinquent original returns or payments is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater.

SECTION 2. A new subsection to section 57-38-45 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

If any corporation fails to file an income tax return as required by section 57-38-32 on the date prescribed in section 57-38-34, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of up to five hundred dollars for each failure to file.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 559

SENATE BILL NO. 2280
(Senator Tennefos)
(Representative Dorso)

INCOME TAX REFUND SETOFF PRIORITY

AN ACT to create and enact a new subsection to section 57-38.3-04 of the North Dakota Century Code, relating to priority of income tax refund setoff; and to amend and reenact subsection 1 of section 57-38.3-02 of the North Dakota Century Code, relating to the definition of claimant agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means ~~the child support unit of~~ the department of human services.

SECTION 2. A new subsection to section 57-38.3-04 of the North Dakota Century Code is created and enacted as follows:

A claim made by any child support unit of the department of human services has priority in setting off any refund. Other claims rank by date of certification under section 57-38.3-05 in the office of the commissioner with the claim earlier certified having priority.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 560

SENATE BILL NO. 2052
(Senator Traynor)

SEED CAPITAL INVESTMENT CREDIT

AN ACT to create and enact chapter 57-38.5 of the North Dakota Century Code, relating to a seed capital investment income tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-38.5 of the North Dakota Century Code is created and enacted as follows:

57-38.5-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of economic development and finance.
2. "New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.
3. "Primary sector business" means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth.
4. "Qualified business" means a primary sector business that:
   a. Is incorporated in North Dakota as a for-profit corporation or is a partnership, limited partnership, or joint venture;
   b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
   c. Has North Dakota residents as a majority of its employees;
   d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity;
   e. Has a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity;
   f. Had gross sales receipts of less than two million dollars in its most recently ended taxable year.
5. "Taxpayer" means an individual, estate, or trust.

57-38.5-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 4 of section 57-38.5-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.

57-38.5-03. Seed capital investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability under section 57-38-29. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not less than five thousand dollars and not more than fifty thousand dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.

2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under this chapter.

3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in which the investment was made.

4. A partnership that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.

5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years.

6. Tax credits for investments in one qualified business may not exceed the least of the following amounts:

   a. Thirty percent of the total amount of investments in the qualified business during the taxable year.

   b. Gross receipts from out-of-state sales of the business during the taxable year.

   c. Two hundred fifty thousand dollars.

7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.

8. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the business is not entitled to a credit under this section. A member of the immediate family of a taxpayer disqualified by this subsection is not entitled to the credit under this section. For purposes of this subsection, "immediate family" means the taxpayer's spouse, parent, sibling, or child or the spouse of any such person.

9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest as provided under section 57-38-45, must be paid by the taxpayer.

57-38.5-04. Taxable year for seed capital investment tax credit. The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax liability for the taxable year in which full consideration for the investment in the qualified business was received by the qualified business.

57-38.5-05. Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter in any taxable year is two hundred fifty thousand dollars. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

57-38.5-06. Seed capital investment tax credit - Procedure - Rules. To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.5-07.

57-38.5-07. Investment reporting forms. Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.

2. The dollar amount paid for the investment by the taxpayer.

3. The date on which full consideration was received by the qualified business for the investment.

57-38.5-08. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers as provided under section 57-38-56 for purposes of this chapter. The

director is charged with administration of this chapter as it relates to certification of qualified businesses and the director may adopt rules for that purpose.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1992.

Approved March 25, 1993
Filed March 26, 1993

CHAPTER 561

HOUSE BILL NO. 1214
(Finance and Taxation Committee)
(At the request of the Office of Management and Budget)

HIGHWAY CONTRACT TAXES

AN ACT to create and enact a new chapter to title 57 of the North Dakota Century Code, relating to taxation of department of transportation highway contracts; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Tax levied. There is hereby levied, in addition to all other taxes imposed by law, and must be paid and collected, as herein provided, a privilege or license tax against the contractor on account of the business activities engaged in and in the amount to be determined by the application of rates against gross receipts, as follows: upon every contractor an amount equal to five percent of the gross receipts derived from performance of highway contracts.

Definitions. As used in this chapter:

1. "Contractor" includes every person, firm, or corporation and its assigns entering into any highway contract.

2. "Gross receipts" includes only those amounts derived and received by the contractor from the performance of contracts, including any additional amounts paid to the contractor for cost adjustments to a highway contract which may include fuels, materials, or labor.

3. "Highway contract" means a contract with the department of transportation for the stockpiling of materials or the construction, reconstruction, maintenance, or repair of a highway on the state system which is funded wholly or in part from the state highway fund and does not include any funding, immediate or subsequent, from any political subdivision of this state.

Proceeds. The proceeds of the taxes levied by this chapter must be paid by the contractor to the tax commissioner within thirty days of receipt of the proceeds for performance of a highway contract, and must be dedicated to the state highway fund and may be used solely for the payment of principal and interest on any loan or loans obtained by the department of transportation for the purpose of repaying federal highway funds advanced to the state under section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240; 105 Stat. 1914; 23 U.S.C. 120, note].

Collection. The taxes imposed pursuant to this chapter constitute a debt due the state and may be collected by civil action, in addition to all other methods

provided by law and in this chapter. The taxes, together with interest and penalties, shall constitute and be secured by a lien upon the property of any person from whom taxes are due or who are required to pay taxes. All provisions of the tax laws of this state which apply to the enforcement of liens for license taxes and bonding taxes due the state apply fully to the collection of the taxes levied in this chapter, and the tax commissioner shall collect these taxes and enforce this chapter and shall have and exercise for collection and enforcement all rights and remedies that this state or the tax commissioner has for collection of the state sales tax. All provisions of the state sales tax, with respect to definitions, except the definition of "gross receipts" contained therein, payment and assessment of the state sales tax, making of reports and keeping and preserving records, interest after the due date of tax, penalties for failure to pay tax or otherwise complying with the state sales tax statutes, the promulgation of rules, and the administration and enforcement of the state sales tax statutes, which are not inconsistent with the provisions of this chapter when applied to the tax levied, apply to the tax levied in this chapter. The tax commissioner shall have and exercise the same powers, duties, and obligations with respect to the taxes levied in this chapter as are imposed on the tax commissioner by the state sales tax statutes. All provisions of the state sales tax statutes that are made applicable in this chapter to the taxes levied and to the administration of this section are incorporated by reference and made a part as if fully set forth in this chapter; provided, that the provisions of the state sales tax with respect to the collection by the taxpayer of the tax levied do not apply, the taxes levied being levied against the person required to pay the tax to the state.

SECTION 2. EXPIRATION DATE. This Act is effective until the loan or loans obtained by the department of transportation for the purpose of repaying federal highway funds advanced to the state under section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991 [Pub. L. 102-240; 105 Stat. 1914; 23 U.S.C. 120, note] have been paid or through the taxable year ending December 31, 1997, whichever occurs first.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 562

SENATE BILL NO. 2517
(Senator Redlin)
(Representative Aarsvold)

PUBLIC FACILITY ADMISSIONS SALES TAXES

AN ACT to amend and reenact subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to application of sales taxes to admissions to activities held in publicly owned facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-39.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the activities are held in a publicly owned facility, where the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15-29-13. This exemption does not apply to regular retail sales that are in direct competition with retailers. Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 563

HOUSE BILL NO. 1128
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

FOREIGN POLITICAL SUBDIVISION EXEMPTION

AN ACT to amend and reenact subsection 6 of section 57-39.2-04 of the North Dakota Century Code, relating to the sales and use tax exemption of out-of-state political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 57-39.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Gross receipts from all sales otherwise taxable under this chapter made to the United States or to any state ~~thereof~~, including the state of North Dakota, or any of the subdivisions, departments, agencies, or institutions ~~thereof~~ of any state. A political subdivision of another state is exempt under this subsection only if it is exempt from sales tax in its home state. The governmental units exempted by this subsection shall be issued a certificate of exemption by the commissioner and such certificate shall be presented to each retailer whenever this exemption is claimed.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 564

SENATE BILL NO. 2190
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

FUEL AND OTHER TAX REVISIONS

AN ACT to amend and reenact subsection 10 of section 57-39.2-04, sections 57-40.3-10, 57-43.1-03, 57-43.1-10, 57-43.1-42.1, and 57-43.2-35.1 of the North Dakota Century Code, relating to the exemption of gaming tickets from sales tax, allocation of revenue for motor vehicle fuel taxes, and refunds of motor vehicle fuels and special fuel taxes; and to repeal sections 57-43.1-41, 57-43.1-42.2, and 57-43.2-34 of the North Dakota Century Code, relating to the authorization of the tax commissioner to relieve fuel dealers from collecting tax from licensed fuel importers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 57-39.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. Gross receipts from the sale of gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.

SECTION 2. AMENDMENT. Section 57-40.3-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.3-10. Transfer of revenue. All moneys collected and received under this chapter must be transmitted monthly by the registrar to the ~~state tax commissioner and must be paid to the~~ state treasurer to be transferred and credited to the general fund.

SECTION 3. AMENDMENT. Section 57-43.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03. Refund of tax for fuel used for industrial purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel as defined in section 57-43.1-01 for industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. ~~Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged one-half cent per gallon [3.79 liters] by the dealer and the one-half cent~~

~~charge must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.~~

SECTION 4. AMENDMENT. Section 57-43.1-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-10. Invoice issued to purchaser. Every seller of motor vehicle fuel shall issue to each purchaser, who purchases motor vehicle fuel for agricultural or industrial purposes, a duplicate original invoice for each sale, which must be in the form prescribed by the commissioner and must show the date, name, residence and license number, if any, of the seller, and the number of gallons [liters] of motor vehicle fuel sold. Each invoice so issued must be signed by the purchaser and the seller shall retain one of such duplicate invoices as part of the seller's business records for not less than ~~two~~ three years.

SECTION 5. AMENDMENT. Section 57-43.1-42.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-42.1. Credit for taxes paid on worthless accounts and refunds. Taxes paid on motor vehicle fuel represented by accounts found to be worthless and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit, or any part of it, cannot be utilized by the dealer because of a discontinuance of a business or for other valid reason, the amount may be refunded to the dealer.

SECTION 6. AMENDMENT. Section 57-43.2-35.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-35.1. Credit for taxes paid on worthless accounts and refunds. Taxes paid on special fuels represented by accounts found to be worthless and actually charged off for income tax purposes may be taken as a credit against subsequent taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected. If in any case the credit, or any part of it, cannot be utilized by the dealer because of a discontinuance of a business or for other valid reason, the amount may be refunded to the dealer.

SECTION 7. REPEAL. Sections 57-43.1-41 and 57-43.2-34 of the North Dakota Century Code and section 57-43.1-42.2 of the 1991 Supplement to the North Dakota Century Code are repealed.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 565

SENATE BILL NO. 2051
(Legislative Council)
(Interim Waste Management Committee)

RECYCLING EQUIPMENT SALES TAX EXEMPTION

AN ACT to amend and reenact section 57-39.2-04.3 of the North Dakota Century Code, relating to a sales and use tax exemption for recycling machinery and equipment; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.3. Sales tax exemption for manufacturing or recycling machinery and equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.

2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.

3. To qualify for exemption at the time of purchase, the manufacturer or recycler must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer or recycler must pay the tax and apply to the commissioner for a refund.

~~3.~~ 4. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer or recycler must apply for a refund of the amount remitted by the contractor.

~~4.~~ 5. For purposes of this section, the following definitions apply:

a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.

b. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing or recycling process.

c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in the manufacturing or recycling process. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result.

d. "Machinery" and "equipment" do not include handtools, buildings, or transportation equipment not directly used in manufacturing or recycling; office machines and equipment; machines and equipment used in administrative, accounting, sales, or other segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly and solely in manufacturing or recycling.

e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.

f. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.

g. "Used directly" with respect to manufacturing means used solely in the actual production during processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:

(1) To effect a direct and immediate physical change upon the tangible personal property.

(2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

(3) To test or measure the property on the production line or at a site in the immediate location of production.

(4) To transport, convey, or handle the tangible personal property during the manufacturing.

(5) To package the product for sale and shipment. "Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 566

SENATE BILL NO. 2509
(Senators Solberg, Tallackson, Tennefos)
(Representatives Mahoney, Porter, Svedjan)

MANUFACTURING MACHINERY SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 4 of section 57-39.2-04.3 of the North Dakota Century Code, relating to the sales and use tax exemption for new manufacturing machinery and equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-39.2-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. For purposes of this section, the following definitions apply:

   a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured.

   b. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.

   c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in ~~the~~ actual manufacturing ~~process~~ operations at any time from the initial stage where the raw material is first acted upon and changed in any essential respect through the completion and packaging of the product. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur.

   d. "Machinery" and "equipment" do not include handtools, buildings, or transportation equipment not used directly ~~used~~ in manufacturing; office machines and equipment; machines and equipment used in administrative, accounting, sales, or other segments of the business; any property that becomes a part of the manufactured product; or any other equipment or machinery not used directly and solely in manufacturing.

   e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.

   f. "Used directly" means used solely in the actual production ~~during~~, processing, fabrication, or assembly of raw materials, or partially

finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:

(1) To effect a direct ~~and immediate~~ physical change upon the tangible personal property.

(2) To guide or measure a direct ~~and immediate~~ physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

(3) To test or measure the property on the production line or at a site in the ~~immediate~~ location of production.

(4) To transport, convey, or handle the tangible personal property during the manufacturing.

(5) To package the product for sale and shipment.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 567

SENATE BILL NO. 2468
(Senator Nelson)

SALES TAX PERMITHOLDERS LIST ACCESS

AN ACT to amend and reenact section 4 of chapter 99 of the 1991 Session Laws of North Dakota, relating to the expiration date of the time limit for access to the list of sales tax permitholders by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4 of chapter 99 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 4. EXPIRATION DATE. Section 3 of this Act is effective through June 30, ~~1993~~ 1995, and after that date is ineffective.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 568

HOUSE BILL NO. 1216
(Representative Payne)

MOTOR VEHICLE EXCISE TAX REFUND PERIOD

AN ACT to amend and reenact section 57-40.4-01 of the North Dakota Century Code, relating to extension of the statute of limitations regarding a refund of motor vehicle excise tax to a purchaser who is permanently physically disabled or a disabled veteran; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.4-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.4-01. Motor vehicle excise tax refunds - Three-year limitation - Exception. If it shall appear that any motor vehicle excise tax paid on or after July 1, 1967, was paid in error, or for any other reason the tax was not due under the provisions of chapter 57-40.3, the tax shall be refunded to the person who paid the same upon an application made and duly allowed in accordance with this chapter; provided, that the application is made within three years from the date of the payment of the tax, except that for a disabled veteran or permanently physically disabled person the application must be made within five years from the date of the payment of the tax.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective for any motor vehicle purchase made after December 31, 1987.

SECTION 3. EXPIRATION DATE. This Act is effective through September 1, 1993, and after that date is ineffective.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 569

SENATE BILL NO. 2232
(Political Subdivisions Committee)
(At the request of State Radio Communications)

911 SYSTEM STANDARDS

AN ACT to amend and reenact subsection 2 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota as amended by section 1 of chapter 726 of the 1989 Session Laws of North Dakota, relating to standards and guidelines for 911 telephone systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota as amended by section 1 of chapter 726 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

2. The advisory committee with the assistance of the state radio communications office shall establish standards and guidelines for the development and operation of all emergency 911 telephone systems ~~that utilize a workable local, governmental location system~~. The standards and guidelines are to establish the level of emergency 911 telephone system services to be provided and the uniformity and compatibility of emergency 911 telephone systems in the state.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 570

HOUSE BILL NO. 1188
(Transportation Committee)
(At the request of State Radio Communications)

EMERGENCY SERVICES COMMUNICATION COMMITTEE

AN ACT to amend and reenact section 3 of chapter 720 of the 1987 Session Laws of North Dakota as amended by section 6 of chapter 686 of the 1991 Session Laws of North Dakota, relating to the expiration date of the emergency services communication system advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 3 of chapter 720 of the 1987 Session Laws of North Dakota as amended by section 6 of chapter 686 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, ~~1994~~ 1996, and after that date is ineffective.

Approved April 19, 1993
Filed April 20, 1993

CHAPTER 571

SENATE BILL NO. 2211
(Political Subdivisions Committee)
(At the request of the State Radio Communications)

ENHANCED 911 DATA

AN ACT to create and enact two new sections to chapter 57-40.6 of the North Dakota Century Code, relating to enhanced 911 data bases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-40.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Data base. In 911 systems that have been approved by the state emergency service communication system advisory committee, any telecommunications company providing emergency 911 service shall provide, on an annual basis, current customer names, addresses, and telephone numbers to each public service answering point within each 911 system and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines. Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iv).

SECTION 2. A new section to chapter 57-40.6 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Use of the furnished information. Names, addresses, and telephone numbers provided to a 911 public service answering point under section 1 of this Act are private data and may be used only for verifying the location or identity, or both, for response purposes only, of a person calling a 911 answering point for emergency help. The information furnished may not be used or disclosed by the public service answering point or its agents or employees for any other purpose except under a court order.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 572

HOUSE BILL NO. 1187
(Transportation Committee)
(At the request of State Radio Communications)

EMERGENCY COMMUNICATIONS LIABILITY

AN ACT to create and enact a new section to chapter 57-40.6 of the North Dakota Century Code, relating to liability for an act or omission in connection with any emergency services communication system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Emergency services communication system or emergency instructions - Liability.

1. A public agency, public safety agency, or local exchange telecommunications company that provides access to an emergency system at or below cost, or any officer, agent, or employee of any public agency or local exchange telecommunications company, is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under chapter 57-40.6.

2. A person who gives emergency instructions through a system as provided under chapter 57-40.6, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.

3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 573

HOUSE BILL NO. 1399
(Representatives Dorso, Wald)

FUELS TAX CONTINGENT INCREASE

AN ACT to create and enact a new section to chapter 57-43.1, a new section to chapter 57-43.2, and a new subsection to section 57-43.2-23 of the North Dakota Century Code, relating to additional motor vehicle fuels taxes and special fuels taxes to be imposed if additional federal highway matching funds become available; to amend and reenact subsection 1 of section 57-43.2-14 and section 57-43.2-15 of the North Dakota Century Code, relating to special fuel users; to provide a penalty; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

Additional motor vehicle fuels taxes. An additional tax in the amount and upon the conditions provided in this section is imposed on all motor vehicle fuel sold or used in this state.

1. For purposes of this section:

   a. "Additional federal highway matching funds" means amounts of federal highway matching funds available to this state in excess of eighty-four million dollars for the 1993-95 biennium, for which a letter of commitment is received from the federal highway administration.

   b. "Letter of commitment" means a communication irrevocably providing that additional federal highway matching funds are available to the state of North Dakota on a matching fund basis.

2. The tax imposed under this section applies from the first day of the first full month beginning at least ten days after the director of the department of transportation certifies to the tax commissioner that a letter or letters of commitment have been received obligating federal funds in the amounts provided in this subsection. The tax imposed by this section is as follows:

   a. An additional tax of one cent per gallon [3.79 liters] if the cumulative amount of additional federal highway matching funds available to the state according to letters of commitment received before June 30, 1995, is more than six million dollars.

   b. In addition to the tax under subdivision a, an additional tax of one cent per gallon [3.79 liters] if the cumulative amount of additional federal highway matching funds available to the state according to

letters of commitment received before June 30, 1995, is more than nineteen million five hundred thousand dollars.

c. In addition to the taxes imposed by subdivisions a and b, an additional tax of one cent per gallon [3.79 liters] if the cumulative amount of additional federal highway matching funds available to the state according to letters of commitment received before June 30, 1995, is more than thirty-three million dollars.

SECTION 2. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Additional special fuel tax. An additional excise tax is imposed on the sale or delivery of any special fuel taxable under subsection 1 of section 57-43.2-02, in the amount and upon the conditions provided in this section.

1. For purposes of this section:

   a. "Additional federal highway matching funds" means amounts of federal highway matching funds available to this state in excess of eighty-four million dollars for the 1993-95 biennium, for which a letter of commitment is received from the federal highway administration.

   b. "Letter of commitment" means a communication irrevocably providing that additional federal highway matching funds are available to the state of North Dakota on a matching fund basis.

2. The tax imposed under this section applies from the first day of the first full month beginning at least ten days after the director of the department of transportation certifies to the tax commissioner that a letter or letters of commitment have been received obligating federal funds in the amounts provided in this section. The tax imposed by this section is as follows:

   a. An additional tax of one cent per gallon [3.79 liters] if the cumulative amount of additional federal highway matching funds available to the state according to letters of commitment received before June 30, 1995, is more than six million dollars.

   b. In addition to the tax under subdivision a, an additional tax of one cent per gallon [3.79 liters] if the cumulative amount of additional federal highway matching funds available to the state according to letters of commitment received before June 30, 1995, is more than nineteen million five hundred thousand dollars.

   c. In addition to the taxes imposed by subdivisions a and b, an additional tax of one cent per gallon [3.79 liters] if the cumulative amount of additional federal highway matching funds available to the state according to letters of commitment received before June 30, 1995, is more than thirty-three million dollars.

SECTION 3. AMENDMENT. Subsection 1 of section 57-43.2-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers and purchase records of special fuel users and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, or three years after purchase by a special fuel user, assess the tax and, if any additional tax is found due, the commissioner shall notify the taxpayer in detail of the reason for the increase.

SECTION 4. AMENDMENT. Section 57-43.2-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-15. Refusal or failure to file return or pay tax when due - Deficiencies - Penalties. If any special fuel dealer refuses or fails to file a return required by this chapter or fails to pay the tax due within the time prescribed by section 57-43.2-12, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which ~~such~~ the refusal or failure continues, excepting the month within which the tax became due. If any special fuel user fails to pay any tax due under this chapter, the commissioner shall impose a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which the refusal or failure continues, not including the month within which the tax became due. The commissioner, for good cause shown, may waive the penalty or the interest provided by this section. No licensed special fuel dealer may be held liable for taxes due from a special fuel user.

SECTION 5. A new subsection to section 57-43.2-23 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Use special fuel for which an exemption was claimed under section 57-43.2-02 for any nonexempt purpose.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the state highway tax distribution fund in the state treasury, the entire state's share of revenue from the additional tax imposed by sections 1 and 2 of this Act, but not exceeding $22,500,000, or so much of the sum as may be necessary, plus up to $43,000,000 of additional federal highway matching funds as defined in section 1 of this Act, to the department of transportation for the purpose of providing funds needed to match additional federal highway matching funds and to authorize the expenditure of those funds and federal funds that may become available for highway purposes for the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 7. EXPIRATION DATE. Sections 1 and 2 of this Act are ineffective after December 31, 1995.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 574

SENATE BILL NO. 2455
(Senator Lindgren)

COUNTY DEBT PROCEDURES

AN ACT to amend and reenact sections 57-47-02, 57-47-03, and 57-47-04 of the North Dakota Century Code, relating to the county deficiency levy; and to repeal section 57-47-01 of the North Dakota Century Code, relating to lending by the Bank of North Dakota and banking associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-47-02 of the North Dakota Century Code is amended and reenacted as follows:

57-47-02. County authorized to borrow - Term - Interest rate. Whenever in the judgment of the board of county commissioners all taxes authorized to be levied in any one year for general or special county purposes are insufficient to carry on the primary governmental functions, or to pay the mandatory obligations imposed by law upon a county, then such a county may borrow money ~~from the Bank of North Dakota or a banking association~~ in such an amount as the board shall determine to be necessary to meet the deficiencies existing in its general or special funds, or to carry on primary governmental functions, and to pay mandatory obligations. For the purpose of borrowing, a county may issue ~~an evidence~~ evidences of indebtedness, which must consist of an agreement by the county to pay a stated sum on a specified date, or on or before a specified date, not more than five years in the future, together with interest thereon at a rate or rates resulting in an average annual net interest cost not to exceed twelve percent per annum if sold privately, or with no interest rate ceiling if sold at a public sale or to the ~~Bank~~ state of North Dakota or any of its agencies or instrumentalities. A public sale must comply with the procedures set out in chapter 21-03. There is no requirement for an advertisement for bids if an evidence of indebtedness is sold privately or to the ~~Bank~~ state of North Dakota or any of its agencies or instrumentalities.

SECTION 2. AMENDMENT. Section 57-47-03 of the North Dakota Century Code is amended and reenacted as follows:

57-47-03. Application for loan - Contents ~~- Verified~~. Whenever the board of county commissioners desires to ~~make a loan~~ issue evidences of indebtedness for any of the purposes authorized in this chapter, it shall ~~make an application which shall set forth~~ provide information to prospective purchasers, including the assessed valuation of the county, the amount of taxes levied for the current year or years involved, the status of its general and special funds, and the amount required to carry on its primary governmental functions and to pay its mandatory obligations, and such other data as the ~~industrial commission or the state banking board~~ purchaser may require. ~~The application shall be verified by the certificate of the county auditor as to its accuracy.~~

SECTION 3. AMENDMENT. Section 57-47-04 of the North Dakota Century Code is amended and reenacted as follows:

57-47-04. Levy of tax to repay loan - Limitation. Upon the ~~approval of an application for a loan~~ issuance of the evidence of indebtedness, the board of county commissioners shall levy a general tax from year to year upon all of the general taxable property of the county, not exceeding the limitation in subsection 27 of section 57-15-06.7, for the purpose of providing funds sufficient to repay the amount of the loan, with interest, at the time of maturity. The tax may not exceed three mills for any one year regardless of the number of loans outstanding under this chapter.

SECTION 4. REPEAL. Section 57-47-01 of the North Dakota Century Code is repealed.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 575

HOUSE BILL NO. 1492
(Representatives Kempenich, Byerly, Drovdal)
(Senators Goetz, Krauter)

OIL AND GAS TAX UNALLOCATED REVENUES

AN ACT to amend and reenact section 57-51-16 of the North Dakota Century Code, relating to disposition of unallocated revenues from oil and gas gross production taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-16 of the North Dakota Century Code is amended and reenacted as follows:

57-51-16. Distribution of proceeds ~~to general revenue fund~~ in certain cases. ~~In all cases where~~ If gross production tax is paid to the commissioner and the reports accompanying such tax are insufficient to enable ~~said~~ the commissioner to determine the source, by county, from which it is produced ~~and he is unable to secure such information as will enable him to determine the source of such oil or gas, it shall be the duty of the commissioner, at the expiration of six months from the date of payment of such gross production tax, to apportion the same to the general fund of the state of North Dakota and to so certify to~~ the state treasurer shall allocate those revenues under this section. In the first distribution to counties under section 57-51-15 which occurs after June gross production tax revenues are received by the state treasurer for allocation, the revenue under this section must be allocated as part of the revenue that is attributable to oil and gas produced in the county that received the least amount of revenue of the counties that received distributions under section 57-51-15 during the year ended June thirtieth.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 576

HOUSE BILL NO. 1125
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

GROSS PRODUCTION TAX REFUND INTEREST

AN ACT to amend and reenact section 57-51-19 of the North Dakota Century Code, relating to interest on overpayment of oil and gas gross production taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51-19. Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the state auditor, the state auditor shall issue a warrant for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest ~~at the rate of ten percent per annum must be paid on~~ arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

A taxpayer may file a claim for credit or refund of an overpayment of tax. For taxable periods beginning before January 1, 1991, the claim must be filed within six years of the due date of the return or six years after the return was filed. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim within five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning after December 31, 1994, the taxpayer must file the claim within three years. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.

SECTION 2. EFFECTIVE DATE. This Act becomes effective for refunds arising from production periods beginning after June 30, 1993.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 577

SENATE BILL NO. 2279
(Senators Yockim, O'Connell)
(Representatives Byerly, Dobrinski)

WORKED-OVER WELL EXEMPTION

AN ACT to amend and reenact section 57-51.1-02 and subsection 4 of section 57-51.1-03 of the North Dakota Century Code, relating to application of the oil extraction tax to oil produced from a well that was worked over; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for oil produced from wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, for oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991, for oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, ~~and~~ for incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03, or for oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more, then the rate of tax for the following months on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted. However, if after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year, the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project.

SECTION 2. AMENDMENT. Subsection 4 of section 57-51.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded ~~either a minimum of~~ sixty-five thousand dollars or ~~a minimum of thirty thousand dollars if~~ production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1993.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 578

HOUSE BILL NO. 1380
(Representatives Stenson, Thorpe, Wanzek, Sitz, Kempenich)
(Senator O'Connell)

DISABLED PERSON MOBILE HOME TAX EXEMPTION

AN ACT to amend and reenact subsection 1 of section 57-55-10 of the North Dakota Century Code, relating to exemption from mobile home taxation for a permanently and totally disabled person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-55-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A mobile home described in this subsection to the extent herein limited is exempt from taxation under this chapter; provided, that the mobile home shall have a tax permit as provided in section 57-55-06:

   a. If it is owned and used as living quarters of a military person on active military duty in this state who is a resident of another state.

   b. If it is owned and occupied by a welfare recipient, provided the mobile home is not permanently attached to the land and classified as real property. For the purposes of this subdivision, "welfare recipient" means any person who is certified to the county director of tax equalization by the county social service board as receiving the major portion of income from any state or federal public assistance program.

   c. If it is owned and used as living quarters by a disabled veteran or unremarried surviving spouse who meets the requirements of subsection 20 of section 57-02-08.

   d. If it is owned and used as living quarters by a permanently and totally disabled person or unremarried surviving spouse who meets the requirements of subsection 20 of section 57-02-08.

   e. If it is owned and used as the living quarters for a blind person who meets the requirements of subsection 22 of section 57-02-08.

   ~~e.~~ f. If it is owned and used by a person who uses it as living quarters and who qualifies for the homestead credit provided in section 57-02-08.1, and the mobile home shall be regarded for the purposes of this exemption as the homestead of the person claiming the exemption.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 579

HOUSE BILL NO. 1362
(Representatives Wardner, Kempenich, Timm)
(Senators Bowman, Krauter, Goetz)

COAL SEVERANCE TAX REDUCTION

AN ACT to create and enact a new section to chapter 57-61 of the North Dakota Century Code, relating to a severance tax reduction for coal mined for shipment out of state and to provide for allocation of the remaining tax revenues.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-61 of the North Dakota Century Code is created and enacted as follows:

Severance tax reduction for coal mined for out-of-state shipment. For coal subject to taxes under this chapter which is shipped out of state after June 30, 1995, and before July 1, 2000:

1. The coal is exempt from fifty percent of the taxes imposed under section 57-61-01.

2. The coal is subject to fifteen percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocation to the lignite research fund as provided in subsection 2 of section 57-61-01.5.

3. In addition to the taxes under subsection 2, the coal may be subject to up to thirty-five percent of the severance taxes imposed under section 57-61-01 at the option of the county in which the coal is mined. The board of county commissioners, by resolution, may grant to the operator of a mine from which the coal is shipped out of state a partial or complete exemption from this portion of the severance tax. Any tax revenue from full or partial taxation under this subsection must be allocated to the county under subsection 2 of section 57-62-02.

4. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and must be allocated as provided in section 57-61-01.5.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 580

SENATE BILL NO. 2505
(Senators Keller, Freborg)
(Representatives Bodine, Mahoney, Tollefson)

SEVERANCE TAX COUNTIES' ALLOCATION

AN ACT to amend and reenact subdivision b of subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to allocation of coal severance tax revenues between a coal-producing county and a non-coal-producing county; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 2 of section 57-62-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:

(1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

(2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the

coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.

(3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.

(4) For the purposes of this ~~subdivision~~ subsection:

(a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.

(b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.

(c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.

(d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.

(e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.

SECTION 2. EFFECTIVE DATE. This Act is effective for calendar years after 1993.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 581

SENATE BILL NO. 2358
(Senators Goetz, Keller, Tallackson)
(Representatives Dalrymple, Kaldor, St. Aubyn)

LIGNITE RESEARCH FUND REVENUES

AN ACT to create and enact a new subdivision to subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to allocation of a portion of a county's share of coal severance tax revenues to the lignite research fund; to amend and reenact subsection 3 of section 57-62-02 of the North Dakota Century Code, relating to allocation of a portion of the state general fund share of coal severance tax revenues to the lignite research fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If the amendment to the Constitution of North Dakota proposed by Senate Concurrent Resolution No. 4014, as approved by the Fifty-third Legislative Assembly, is not approved by the voters, subsection 3 of section 57-62-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Fifty percent shall be deposited in the state's general fund, except that:

   a. Five percent of the revenue allocated to the state general fund under this subsection, not including revenue allocated under subdivision b, must be deposited in the lignite research fund for partial funding of the state share of clean coal demonstration projects approved by the industrial commission and the United States department of energy. If no proposed clean coal demonstration projects are approved by the United States department of energy, this subdivision does not apply.

   b. After June 30, 1997, the revenue allocated to the state general fund by this subsection which is attributable to severance taxes on new coal production from clean coal demonstration projects must be deposited in the lignite research fund for partial funding of the state share of the clean coal demonstration project generating the new coal production.

SECTION 2. AMENDMENT. If the amendment to the Constitution of North Dakota proposed by Senate Concurrent Resolution No. 4014, as approved by the Fifty-third Legislative Assembly, is approved by the voters, subsection 3 of section 57-62-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Fifty percent shall be deposited in the state's general fund, except that after June 30, 1997, the revenue allocated to the state general fund under this subsection which is attributable to severance taxes on new coal production from clean coal demonstration projects must be deposited in the

lignite research fund for partial funding of the state share of the clean coal demonstration project generating the new coal production.

SECTION 3. If the amendment to the Constitution of North Dakota proposed by Senate Concurrent Resolution No. 4014, as approved by the Fifty-third Legislative Assembly, is not approved by the voters, a new subdivision to subsection 2 of section 57-62-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, five percent of the revenue generated from a currently active coal mining operation that produces coal for a clean coal demonstration project and which is allocated to a county under paragraph 2 of subdivision a or paragraph 2 of subdivision b must be deposited in the lignite research fund for partial funding of the state share of clean coal demonstration projects approved by the industrial commission and United States department of energy, unless a job development authority makes a deposit from any source of the same amount determined under this subdivision into the lignite research fund. If no proposed clean coal demonstration project is approved by the United States department of energy, this subdivision does not apply.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 1994.

Approved March 24, 1993
Filed March 25, 1993

TOWNSHIPS

CHAPTER 582

SENATE BILL NO. 2324
(Senators Wogsland, Graba, Holmberg)
(Representatives Kretschmar, Laughlin)

TOWNSHIP FUNDS AND SPECIAL MEETINGS

AN ACT to create and enact a new subsection to section 58-03-07 of the North Dakota Century Code, relating to powers of township electors to transfer funds to rural fire protection districts; and to amend and reenact section 58-04-02 of the North Dakota Century Code, relating to calling of a special township meeting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 58-03-07 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

To direct the transfer of township funds to a rural fire protection district or rural fire department, for fire protection within the township.

SECTION 2. AMENDMENT. Section 58-04-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

58-04-02. Special meetings - When held. A special township meeting may be held for the purpose of electing township officers to fill vacancies that occur, to authorize expansion of the board of township supervisors from three to five members, and for the purpose of transacting other lawful township business whenever the supervisors or township clerk, or any two of them, ~~together with at least twelve~~ or twenty percent of the freeholders of the township, shall file in the office of the township clerk a written statement that a special meeting is necessary, or whenever a special meeting is required by any other provision of the laws of this state.

Approved March 22, 1993
Filed March 23, 1993

TRUSTS, USES, AND POWERS

CHAPTER 583

SENATE BILL NO. 2416
(Senators W. Stenehjem, Maxson)

TRUSTEES' INVESTMENT STANDARD

AN ACT to amend and reenact section 59-02-08 of the North Dakota Century Code, relating to adoption of a "prudent investor" standard for investment of funds by a trustee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-02-08 of the North Dakota Century Code is amended and reenacted as follows:

59-02-08. Investment of trust funds - ~~Failure to invest~~ Prudent investor rule. ~~A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same. If he fails so to do, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.~~ A trustee is under a duty to the beneficiaries to invest and manage the funds of a trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust. The "prudent investor rule" means that in making investments, the fiduciaries shall exercise the judgment and care, under the circumstances and then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation, but in regard to the permanent dispostion of funds, considering probable safety of capital as well as probable income. This standard requires the exercise of reasonable care, skill, and caution, and is to be applied to investments not in isolation, but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suitable to the trust.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 584

SENATE BILL NO. 2420
(Senators Maxson, Holmberg, W. Stenehjem)
(Representatives Porter, Maragos)

TRUSTEES' INVESTMENT POWERS

AN ACT to amend and reenact section 59-04-15 of the North Dakota Century Code, relating to powers and reports of trustees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-04-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

59-04-15. Powers and duties of trustee.

1. Every act of the trustee in contravention of the terms of the trust and statute is absolutely void except where the district or county court having jurisdiction and supervision of the administration of the trust, by order, on notice and hearing as provided in this chapter, authorizes the trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in the manner as best may accomplish the object and purpose of the trust, where it is made to appear to the satisfaction of the court that the order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested in the trust estate, or who thereafter may acquire an interest in the trust estate, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of the instrument will tend to destroy the trust estate or create losses of principal or income.

2. Unless otherwise provided by the terms of the trust or an order in a supervised proceeding, a trustee acting reasonably for the benefit of the beneficiaries may exercise the powers granted to a personal representative under section 30.1-18-15.

3. A trust agreement may grant the powers of section 30.1-18-15, as those powers exist on the date of signing the agreement, to a trustee by a specific reference to section 30.1-18-15 and the powers relating to investment under sections 6-05-15, 6-05-15.1, and 6-05-15.2.

Approved March 15, 1993
Filed March 16, 1993

WAREHOUSING AND DEPOSITS

CHAPTER 585

SENATE BILL NO. 2220
(Agriculture Committee)
(At the request of the Public Service Commission)

RECEIVING STATIONS

AN ACT to create and enact a new subsection to section 60-02-01 and a new section to chapter 60-02 of the North Dakota Century Code, relating to procedures to license receiving stations and the definition of receiving station.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 60-02-01 of the North Dakota Century Code is created and enacted as follows:

"Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

SECTION 2. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Receiving stations. A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives commission permission to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 586

SENATE BILL NO. 2195
(Agriculture Committee)
(At the request of the Public Service Commission)

PUBLIC WAREHOUSE LICENSES

AN ACT to amend and reenact sections 60-02-07, 60-02-38, and subsection 3 of section 60-02-40 of the North Dakota Century Code, relating to the license for a public warehouse and redemption of receipts when the ownership of a warehouse is transferred.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - How obtained - Fee. An annual license must be obtained ~~through~~ from the commission for each public warehouse in operation in this state~~, and the~~. The license expires on July thirty-first of each year. No license ~~so issued~~ may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described ~~therein~~. The annual license fee for a public warehouse ~~must be~~ is one hundred ~~thirty~~ fifty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, ~~two~~ three hundred ~~sixty~~ dollars for a warehouse of a bushel capacity of two hundred thousand and one to and including five hundred thousand [7047.83 to and including 17619.54 cubic meters], and ~~three~~ four hundred ~~forty~~ dollars for a warehouse of a bushel capacity of five hundred thousand and one [17619.57 cubic meters] or more. ~~The fees collected under this section must be paid into the state treasury and credited to the general fund of the state.~~ If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such warehouses, and scale tickets, warehouse receipts, checks, and credit-sale contracts of but one series are issued for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee ~~must be~~ is based upon the combined bushel capacity of ~~said~~ the warehouses.

SECTION 2. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

60-02-38. Refund of license fee by commission. ~~The~~ When requested in writing, the commission shall refund the license fee of a public warehouse, or so much ~~thereof~~ as in its judgment ~~would be~~ is just and reasonable, when satisfactory proof is furnished ~~to said commission~~ that ~~such~~ the warehouse has been transferred to some other person, and ~~application is made by~~ the new owner has applied for a license for the same warehouse for the unexpired period for which the original license was issued. ~~Where~~ When a warehouse is destroyed by fire or other cause, the license fee may be prorated ~~in such amount~~ as the commission may determine.

SECTION 3. AMENDMENT. Subsection 3 of section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The commission may waive the thirty-day notice period upon receipt of written consent of all receiptholders.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 587

HOUSE BILL NO. 1134
(Agriculture Committee)
(At the request of the Public Service Commission)

ROVING GRAIN OR HAY BUYER

AN ACT to amend and reenact subsection 6 of section 60-03-01 of the North Dakota Century Code, relating to the definition of roving grain and hay buyer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsection 6 of section 60-03-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Roving grain or hay buyer" means any person, other than a public warehouseman, who is in the business of buying grain or hay from the owner for resale or processing, or markets grain or hay on behalf of the owner. "Roving grain or hay buyer" does not include any producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.

Approved April 9, 1993
Filed April 9, 1993

[1] NOTE: Subsection 6 of 60-03-01 was also amended by section 4 of Senate Bill No. 2334, chapter 52.

CHAPTER 588

HOUSE BILL NO. 1162
(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

STORAGE COMPANY LICENSES

AN ACT to amend and reenact section 60-07-01 of the North Dakota Century Code, relating to fees charged for licensing storage companies as public warehouses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-07-01 of the North Dakota Century Code is amended and reenacted as follows:

[1] **60-07-01. Licensing storage companies as public warehouses.** The public service commission may license any ~~suitable~~ person~~, firm, or corporation organized under the laws of the state, or authorized to do business within the state,~~ to carry on the business of a public warehouse for the storage of any goods, wares, merchandise, or other general or special commodities, except grain in bulk. A license to engage in business of a public warehouseman may be obtained by filing an application with the ~~public service~~ commission showing:

1. The city and street address, or a description of the land, where each warehouse is located, together with the business name under which each such warehouse is operated.

2. The kind of property stored in each warehouse.

~~Said~~ The application ~~shall~~ must be accompanied by the bond required under section 60-07-02, and an annual fee of ~~ten~~ twenty-five dollars for each warehouse~~, which fee shall be paid into the state treasury and credited to the general fund of the state~~. ~~Such~~ The license ~~shall~~ must be renewed annually and ~~shall~~ must be issued for the calendar year.

Approved April 7, 1993
Filed April 8, 1993

[1] NOTE: Section 60-07-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 589

HOUSE BILL NO. 1444
(Representative Dorso)

STORAGE COMPANY LICENSES

AN ACT to amend and reenact section 60-07-11 of the North Dakota Century Code, relating to storage company license exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-07-11 of the North Dakota Century Code is amended and reenacted as follows:

60-07-11. License exemptions - Public warehouses - To whom applied. This chapter ~~shall~~ does not ~~be construed to~~ apply to:

1. ~~Any~~ An implement transfer company;

2. ~~Any~~ A garage storing motor vehicles for hire for the owners thereof; ~~or~~

3. ~~Any~~ A railroad or transportation company, if within forty-eight hours after receipt of goods, wares, ~~and~~ or merchandise at their destination, it ~~shall notify~~ notifies the consignee of the arrival thereof in writing. In case ~~such~~ the consignee or ~~his~~ the consignee's assignee fails ~~and neglects~~ to call for or receive ~~said~~ the goods, wares, or merchandise within thirty days after receipt of the same by ~~any~~ the railroad or transportation company, ~~said~~ the railroad or transportation company must turn over ~~said~~ the goods, wares, or merchandise to a licensed bonded storage company or warehouseman in the city in which ~~said~~ the goods, wares, or merchandise then are located, or, if there is no storage company in ~~such~~ that city, to a licensed bonded storage company or warehouseman in the city on the line of the carrier nearest to the place where ~~such~~ the goods, wares, or merchandise then are located, upon the payment of the charges of ~~said~~ the carriers thereon. ~~Such~~ The charges~~, thus~~ paid by ~~said~~ the bonded storage company or warehouseman to ~~said~~ the carrier~~, shall be~~ constitute a lien on ~~said~~ the goods, wares, or merchandise; or

4. A person who deals only in used household goods or furniture.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 590

HOUSE BILL NO. 1133
(Agriculture Committee)
(At the request of the Public Service Commission)

GRAIN WEIGHING FEES

AN ACT to repeal section 60-09-03 of the North Dakota Century Code, relating to fees charged for weighing grain at grain elevators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 60-09-03 of the North Dakota Century Code is repealed.

Approved March 22, 1993
Filed March 23, 1993

WATERS

CHAPTER 591

SENATE BILL NO. 2202
(Agriculture Committee)
(At the request of the State Engineer)

WATER PERMITS CANCELED

AN ACT to cancel and declare forfeited all or part of water permits numbered 24C, 939, 2432, 578, and 2708, relating to the right of the state industrial school, roughrider industries, North Dakota association of soil conservation districts, and North Dakota state university-Carrington research extension center to appropriate water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Cancellation of a portion of water permit number 24C. The right of the North Dakota industrial school to appropriate 41.4 acre-feet of water from the Heart River for irrigation purposes under water permit number 24C is canceled and all rights thereunder are forfeited.

SECTION 2. Cancellation of a portion of water permit number 939. The right of roughrider industries to appropriate 226.2 acre-feet of ground water for irrigation purposes under water permit number 939 is canceled and all rights thereunder are forfeited.

SECTION 3. Cancellation of water permit number 2432. The right of roughrider industries to appropriate 659.4 acre-feet of ground water for irrigation purposes under water permit number 2432 is canceled and all rights under the permit are forfeited.

SECTION 4. Cancellation of water permit number 578. The right of the North Dakota association of soil conservation districts to appropriate 241.2 acre-feet of ground water for irrigation purposes under water permit number 578 is canceled and all rights under the permit are forfeited.

SECTION 5. Cancellation of water permit number 2708. The right of the North Dakota state university-Carrington research extension center to appropriate 203.0 acre-feet of ground water for irrigation purposes under water permit number 2708 is canceled and all rights under the permit are forfeited.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 592

HOUSE BILL NO. 1145
(Natural Resources Committee)
(At the request of the State Water Commission)

WATER COMMISSION COMPENSATION OR EXPENSES

AN ACT to amend and reenact section 61-02-12 of the North Dakota Century Code, relating to compensation and expenses of water commission members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-12 of the North Dakota Century Code is amended and reenacted as follows:

61-02-12. Compensation and expenses of appointive members of commission. Each appointive member of the commission shall receive the same compensation per day and shall be reimbursed for ~~his~~ expenses in the same amounts as provided for in section 54-35-10 for members of the legislative council while attending meetings of the commission or, at the discretion of the member, shall receive either per diem compensation or expenses in the amounts provided in section 54-35-10 while otherwise engaged in official business of the commission, including time of travel between ~~his~~ home and the place at which ~~he~~ the member performs such duties.

Approved March 11, 1993
Filed March 11, 1993

CHAPTER 593

SENATE BILL NO. 2169
(Natural Resources Committee)
(At the request of the State Engineer)

APPEALS OF WATER DECISIONS

AN ACT to amend and reenact sections 61-02-76 and 61-03-22 of the North Dakota Century Code, relating to appeals of decisions of the water commission and state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-76 of the North Dakota Century Code is amended and reenacted as follows:

61-02-76. Hearing - Appeals from decision of commission. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the commission under the provisions of this title shall have the right to a hearing by the commission ~~and~~ if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved shall have the right to petition for reconsideration and to appeal ~~from the decision of the commission on such hearing~~, all in accordance with the provisions of chapter 28-32.

SECTION 2. AMENDMENT. Section 61-03-22 of the North Dakota Century Code is amended and reenacted as follows:

61-03-22. Hearing - Appeals from decision of state engineer. Except as more specifically provided in this title, any person aggrieved because of any action or decision of the state engineer under the provisions of this title shall have the right to a hearing by the state engineer ~~and~~ if no hearing on the matter resulting in the action or decision has been held. If a hearing has been held, the person aggrieved shall have the right to petition for reconsideration and to appeal ~~from the decision of the state engineer on such hearing~~, all in accordance with the provisions of chapter 28-32.

Approved March 4, 1993
Filed March 5, 1993

CHAPTER 594

HOUSE BILL NO. 1142
(Natural Resources Committee)
(At the request of the State Water Commission)

DREDGED AND FILL MATERIAL DISPOSAL

AN ACT to regulate the disposal of dredged and fill material in certain waters of the state of North Dakota; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. The state engineer shall adopt definitions that are consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

SECTION 2. Powers. The state engineer has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants may not be expended for other than the purposes for which provided.
4. To enter upon or through permittee's premises where dredged or fill material is discharged, after written notice to the permittee. Such power may be exercised by authorized agents, representatives, and employees of the state engineer.
5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of the chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.

10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

SECTION 3. Permits - Certification from state department of health and consolidated laboratories required. The state engineer may not issue a permit under this Act without a certification from the state department of health and consolidated laboratories that the permitted activity will not adversely affect water quality.

SECTION 4. Specification of disposal sites. The state engineer shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the state engineer. The rules must be consistent with federal law. The state engineer may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site whenever the state engineer determines, after notice and opportunity for public hearing, that the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

SECTION 5. Discharge of dredged or fill material - Permit required - Exceptions.

1. Except as otherwise provided by this Act, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the state engineer. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:

   a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 6 of this Act;

   b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

   c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;

   d. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

   e. Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the state;

   f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the waters of the state are not

impaired, that the reach of the waters of the state is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or

g. The placement of fill material associated with activities which the state regulates by requiring best management practices under chapter 61-28.

2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity whose purpose is to convert an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.

SECTION 6. General permits.

1. In carrying out the functions relating to the discharge or dredged or fill material, the state engineer may, after notice and opportunity for public hearing, issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the state engineer determines that the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards which apply to any activity authorized by the general permit. General permits must be issued pursuant to rules adopted by the state engineer which are consistent with federal law.

2. A general permit may be revoked or modified by the state engineer if, after opportunity for public hearing, the state engineer determines that the activities authorized by the general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

3. The state engineer may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

SECTION 7. Emergency permits. The state engineer may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

SECTION 8. Permit application - Notice - Hearing. Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the state engineer. The application must be on a form prescribed by the state engineer and must include information required by the state engineer. The state engineer may issue a permit after notice and opportunity for public

hearing. Within fifteen days of receipt all the information required to complete an application for a permit, the state engineer shall publish the notice.

SECTION 9. Proceedings.

1. Any proceeding to determine compliance or violation of the provisions of this chapter, or any rule, order, or condition in a permit issued pursuant to this chapter by the state engineer must be conducted in accordance with chapter 28-32.

2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the state engineer if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

SECTION 10. Penalties. The state engineer may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The state engineer may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.

2. The state engineer may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of such violation.

3. The state engineer may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

SECTION 11. Restoration. In lieu of or in addition to the penalties authorized under section 10 of this Act, the state engineer may require restoration of areas in which dredged or fill material has been illegally discharged. If the state engineer determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the state engineer shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the state engineer within thirty days of receipt of the notice. If the area is not restored as required, the state engineer shall cause the restoration of the area and assess the cost of the restoration against the person or persons responsible for the illegal discharge.

SECTION 12. EFFECTIVE DATE. This Act becomes effective on the date the state engineer certifies to the governor and the secretary of state that the state has received approval from the United States environmental protection agency to assume the program under section 404 of the Clean Water Act and that adequate funds have been made available from the federal government or other sources to fund the program

established pursuant to this Act, as determined by the state engineer and approved by the emergency commission. The secretary of state shall forward a copy of the state engineer's certification to the legislative council, with a notation indicating the effective date of this Act.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 595

HOUSE BILL NO. 1144
(Natural Resources Committee)
(At the request of the State Engineer)

STATE ENGINEER COPY FEES

AN ACT to amend and reenact subsections 5, 6, and 7 of section 61-03-05 of the North Dakota Century Code, relating to fees for computer discs, copies of documents, and for the transmission of documents electronically; and to repeal section 61-03-11 of the North Dakota Century Code, relating to furnishing copies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, and 7 of section 61-03-05 of the North Dakota Century Code are amended and reenacted as follows:

5. For ~~making a copy of any document recorded or filed in his office, twenty-five cents for each hundred words or fraction thereof~~ providing computer discs or copies of documents, including copies of blueprints of maps or drawings, government land office plats, benchmark books, survey notes, and water laws, a reasonable fee to be determined by the state engineer.

6. For ~~a blueprint copy of any map or drawing, twenty cents per square foot [929.03 square centimeters] or fraction thereof. For other copies of drawings, the actual cost of the work~~ transmitting documents electronically, a reasonable fee to be determined by the state engineer.

7. For certifying ~~to such~~ copies, two dollars for each certificate.

SECTION 2. REPEAL. Section 61-03-11 of the North Dakota Century Code is repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 596

HOUSE BILL NO. 1053
(Legislative Council)
(Interim Natural Resources Committee)

WATER PERMIT APPLICATIONS

AN ACT to amend and reenact sections 61-04-05 and 61-04-06 of the North Dakota Century Code, relating to water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof. When an application is filed which complies with this chapter and the rules adopted under this chapter, the state engineer shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:

   a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.

   b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.

   c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.

2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The state engineer shall provide a list of all persons who must be notified under this subsection to the applicant.

3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use water facilities in the county in which the proposed water appropriation site is located. The state engineer shall provide a list of all municipal or public use water facilities that must be notified under this subsection to the applicant.

4. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice of the application, in a form prescribed by rule, in ~~a newspaper of general circulation in the area of~~ the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the time and place of a hearing on the application by the state engineer. The applicant shall pay all costs of the publication of notice.

SECTION 2. AMENDMENT. Section 61-04-06 of the North Dakota Century Code is amended and reenacted as follows:

61-04-06. Hearing - Criteria for issuance of permit. Upon the receipt of the proof of publication, the state engineer shall conduct a hearing on the application. If two or more municipal or public use water facilities request a local hearing, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located. The request must be in writing and must be made within fifteen days of when the notice of application is mailed by the applicant pursuant to section 61-04-05. The state engineer shall issue a permit if ~~he~~ the state engineer finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.

2. The proposed means of diversion or construction are adequate.

3. The proposed use of water is beneficial.

4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:

   a. The benefit to the applicant resulting from the proposed appropriation.

   b. The effect of the economic activity resulting from the proposed appropriation.

   c. The effect on fish and game resources and public recreational opportunities.

d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.

e. Harm to other persons resulting from the proposed appropriation.

f. The intent and ability of the applicant to complete the appropriation.

If approved, the approval ~~shall~~ must be noted on the application, and the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6,167,409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to nine copies of the transcript ~~shall~~ must be paid by the applicant.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 597

HOUSE BILL NO. 1143
(Natural Resources Committee)
(At the request of the State Engineer)

STATE WATER RIGHT FORFEITURE

AN ACT to amend and reenact section 61-04-23 of the North Dakota Century Code, relating to forfeiture of water rights by state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-23 of the North Dakota Century Code is amended and reenacted as follows:

61-04-23. Forfeiture of water rights - Inspection of works. Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in ~~his~~ the permit or ceases to use it for the beneficial use cited in ~~his~~ the permit for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer may declare such water permit or right forfeited~~; provided, however, that any such water permit or right held by a state agency, department, board, commission, or institution may be declared forfeited only by the North Dakota legislative assembly~~. For purposes of this chapter, an incorporated municipality has good and sufficient cause excusing the failure to use a water permit, if the water permit may reasonably be necessary for the future water requirements of the municipality. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right, and all ditches and other works constructed or partially constructed thereunder.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 598

HOUSE BILL NO. 1147
(Natural Resources Committee)
(At the request of the Atmospheric Resource Board)

CLIMATIC CHANGE MONITORING

AN ACT to create and enact a new subsection to section 61-04.1-08 of the North Dakota Century Code, relating to the powers and duties of the atmospheric resource board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-04.1-08 of the North Dakota Century Code is created and enacted as follows:

The board shall monitor the current state of knowledge regarding the magnitude and impacts of possible regional and global climatic changes, and shall provide such information to other state agencies that may benefit from such knowledge.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 599

SENATE BILL NO. 2305
(Senators Robinson, Bowman, Langley, Urlacher)
(Representatives Nichols, Rennerfeldt)

WEATHER MODIFICATION AUTHORITIES

AN ACT to create and enact a new section to chapter 61-04.1 and a new subsection to section 61-16.1-09 of the North Dakota Century Code, relating to the creation of temporary weather modification authorities and to powers of water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-04.1 of the North Dakota Century Code is created and enacted as follows:

Temporary weather modification authority. The board of county commissioners of any county that has no weather modification authority may create a temporary weather modification authority by setting a time and place for a public hearing, publishing at least ten days before the hearing notice of the hearing in the official newspaper of the county, and after the public hearing, approving establishment of the authority by majority vote. Upon approval, the board of county commissioners shall designate a water resource district to serve as the temporary weather modification authority. The designated district has all the powers granted to a weather modification authority under sections 61-04.1-23 through 61-04.1-32.

A temporary weather modification authority created under this section may conduct weather modification operations within the county for up to four years from the date of the creation of the temporary authority. To continue operating beyond the four-year period, the temporary authority must be made permanent in accordance with sections 61-04.1-23 through 61-04.1-32.

SECTION 2. A new subsection to section 61-16.1-09 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Have, in addition to any powers provided in this chapter, the authority to conduct weather modification operations in accordance with the procedures and provisions of chapter 61-04.1.

Approved April 12, 1993
Filed April 12, 1993

CHAPTER 600

HOUSE BILL NO. 1146
(Political Subdivisions Committee)
(At the request of the State Engineer)

IRRIGATION DISTRICT ELECTION FILING

AN ACT to amend and reenact section 61-06-12 of the North Dakota Century Code, relating to filing names for irrigation district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-06-12 of the North Dakota Century Code is amended and reenacted as follows:

61-06-12. Candidates at election - Filing names. Any person desiring to be a candidate at an irrigation district election shall file ~~his~~ that person's name with the secretary of the board not less than ~~ten~~ twenty days before ~~such~~ the election. The secretary shall contact each candidate for the purpose of verifying ~~his~~ the candidate's willingness to be a candidate at ~~such~~ the election.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 601

HOUSE BILL NO. 1379
(Representatives Sitz, Wanzek, Dobrinski, Kempenich)
(Senators Urlacher, O'Connell)

FLOOD IRRIGATION BOARDS

AN ACT to amend and reenact section 61-12-02 of the North Dakota Century Code, relating to qualifications of members and appointment of flood irrigation boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-12-02 of the North Dakota Century Code is amended and reenacted as follows:

61-12-02. Board of flood irrigation - How appointed - Filling vacancies - Office. The board of county commissioners of any organized county in this state, at any meeting of the board, by a majority vote of all the members, upon its own motion or on the petition of any person or persons interested, may appoint five ~~freeholders of the county~~ property owners whose property lies within a flood irrigation project as a board of flood irrigation of ~~such~~ the county. If the board of county commissioners appoints a board of flood irrigation it must appoint a board for each flood irrigation project in the county. One member of ~~such~~ the board ~~shall~~ must be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Subsequent appointments ~~shall~~ must be made for terms of five years. All persons so appointed ~~shall~~ hold office until their successors are appointed and qualified. In case of a vacancy the board of county commissioners may fill the ~~same~~ vacancy for the unexpired term by appointment. The board of county commissioners shall provide an office for ~~said~~ the board of flood irrigation at the county seat, suitable for its use and the keeping of its records and shall provide suitable record books for its use.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 602

HOUSE BILL NO. 1148
(Political Subdivisions Committee)
(At the request of the State Water Commission)

WATER RESOURCE DISTRICT CONSOLIDATION

AN ACT to create and enact a new section to chapter 61-16 of the North Dakota Century Code, relating to consolidation of water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16 of the North Dakota Century Code is created and enacted as follows:

Consolidation of water resource districts.

1. Any two or more water resource districts may be consolidated into a single district or existing districts may be adjusted to reflect watershed boundaries, as determined by the state engineer, by filing with the water commission a petition signed by:

   a. A majority of the members of the board of each of the districts; or

   b. Fifty percent or more of the landowners within each of the districts.

   When the petition is filed by the district boards, it must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition. The petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of outstanding obligations and the spreading of assessments for the payment thereof over properties in the newly created district. No petition may be approved by the water commission unless it fully meets the requirements of this section.

2. The water commission shall fix a time and place for a public hearing at a site convenient and accessible for a majority of the affected individuals. At least fifteen days prior to the date of hearing, the commission shall publish notice of the hearing in at least one newspaper of general circulation in each of the districts being consolidated or adjusted. Additional notice of the hearing may be given in a manner prescribed by the water commission.

3. Prior to the hearing, the state engineer shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of the findings to the water

commission. This report must be presented at the petition hearing. If the water commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, it shall deny the petition and state the reasons for denial. If, however, the water commission finds that problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, it shall grant the petition and create the district. Upon creation of the new water resource district, the water commission shall dissolve the included districts or make necessary boundary adjustments to existing districts.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 603

HOUSE BILL NO. 1314
(Representatives Aarsvold, Brown, Gerntholz, Ring)
(Senators Marks, Urlacher)

ABANDONED WATER WELL PLUGGING

AN ACT to create and enact a new subsection to section 61-16.1-09 of the North Dakota Century Code, relating to powers of water resource boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 61-16.1-09 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Plug abandoned water wells and participate in cost-sharing arrangements with water well owners to plug water wells to protect aquifers from pollution or depletion, maintain pressure, and prevent damage to surrounding property.

Approved March 11, 1993
Filed March 12, 1993

CHAPTER 604

SENATE BILL NO. 2380
(Senator Naaden)

WATER RESOURCE DISTRICT PROJECT BIDS

AN ACT to amend and reenact section 61-16.1-14 of the North Dakota Century Code, relating to contracts for construction or maintenance of water resource district projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-14. Contracts for construction or maintenance of project. If the cost of construction or maintenance of a project does not exceed ~~fifteen~~ twenty-five thousand dollars, ~~such~~ the work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of ~~such~~ the construction or maintenance exceeds ~~fifteen~~ twenty-five thousand dollars, the lowest and best bid ~~shall~~ must be accepted. The water resource board shall give at least ten days' notice of the time and place where the contract will be let. The notice ~~shall~~ must be published at least once in a newspaper of general circulation in the district in which the work is to be carried on and ~~shall~~ must be mailed to any prospective bidders known to the water resource board.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board, conditioned upon the proper performance of the contract within the time specified by ~~such~~ the contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section ~~shall~~ may be waived, upon the determination of the water resource board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 605

SENATE BILL NO. 2203
(Agriculture Committee)
(At the request of the State Engineer)

ARTESIAN WELL ADMINISTRATION

AN ACT to amend and reenact sections 61-20-06 and 61-20-07 of the North Dakota Century Code, relating to duties of the state engineer with regard to artesian wells.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-20-06 of the North Dakota Century Code is amended and reenacted as follows:

61-20-06. Duties of state ~~water commission~~ engineer. The state ~~water commission~~ engineer shall advise the citizens of the state as to the practicability of measures affecting the underground waters of this state. The state ~~water commission~~ engineer shall:

1. Counsel and consult with the owner and assist him to work out the most desirable control and use of his well.
2. Select at least three representative flowing wells in each county having that number, and as many more as it may deem advisable.
3. Cause the record of their flows and pressures to be taken, from time to time, to learn as much as possible of the decline, fluctuations, and permanence of the artesian supply.
4. Plan and conduct such other investigations as it may find advisable to ascertain the best method of prolonging the utility of the same.
5. Keep a record of the location, size, depth, flow, size of flow, character of water, construction, and history of all artesian wells of the state, and keep it on file for public reference.
6. Secure the enforcement of all laws pertaining to artesian and phreatic waters of the state.
7. Publish from time to time, as it may deem advantageous, bulletins containing information concerning the artesian wells and phreatic waters of the state.

The state ~~water commission~~ engineer may make such additional reasonable rules and regulations governing such wells as it shall determine.

SECTION 2. AMENDMENT. Section 61-20-07 of the North Dakota Century Code is amended and reenacted as follows:

61-20-07. Enforcement of chapter by state ~~water commission~~ engineer - Appeal. The provisions of this chapter shall be enforced by the state ~~water commission~~ engineer. The state engineer may issue administrative orders requiring compliance with this chapter. An appeal from the ~~commission's~~ engineer's ruling may be taken under the provisions of chapter 28-32.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 606

SENATE BILL NO. 2489
(Senators Nalewaja, Sand, Tallackson)
(Representatives Jacobs, Kempenich, Kerzman)

DRAIN PROJECT BIDS

AN ACT to amend and reenact section 61-21-45 of the North Dakota Century Code, relating to bid requirements for certain water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-21-45 of the North Dakota Century Code is amended and reenacted as follows:

61-21-45. Contracts for work of cleaning and repairing drains. If the cost of any work of cleaning out or repairing any drain, or system of legal drains, if more than one cleaning or repair project is carried on under one contract, does not exceed ~~five~~ twenty-five thousand dollars in any one year, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such work exceeds ~~five~~ twenty-five thousand dollars in any one year, a contract shall be let to the lowest and best bidder in the manner described in this chapter for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district. The competitive bid requirement of this section shall be waived, upon the determination of the board that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 607

HOUSE BILL NO. 1263
(Representatives Jacobs, DeWitz)
(Senator Urlacher)

WATER AUTHORITY DIRECTORS

AN ACT to amend and reenact section 61-24.5-06 of the North Dakota Century Code, relating to election of county directors of the southwest water authority; and to repeal section 57-15-26.7 and chapter 61-24.2 of the North Dakota Century Code, relating to the west river water supply district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-24.5-06. Election of county directors of the southwest water authority. Any person who is a resident and qualified elector of the county, who aspires to the office of director of the southwest water authority, shall, not more than seventy nor less than sixty days ~~or less than fifty-five days~~ and before four p.m. of the ~~fifty-fifth~~ sixtieth day ~~prior to~~ before any primary election preceding a general election at which a director of the authority is to be elected, present to the county auditor a petition giving ~~his~~ that person's name, post-office address, and the title of the office of the southwest water authority to which ~~he~~ that person is seeking election. The petition must contain the signatures of not less than ~~fifty nor more than three hundred~~ two percent of the qualified electors of the county as determined by the number of votes cast in the county for the office of director of the southwest water authority at the most recent preceding election at which the office of director of the southwest water authority was voted upon. Each signer of ~~such~~ the petition shall include with ~~his~~ that signer's name ~~his~~ that signer's mailing address.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA)
} ss.
COUNTY OF)

I _____, being duly sworn, depose and say that I reside in the (county) of _____ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the primary election to be held on the _____ day of _____, 19__, and I do hereby request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for said office.

_____

Subscribed and sworn to before me this ____ day of _____, 19__.

_____
Notary Public, North Dakota

Upon receipt of the petition, the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the ~~aforesaid~~ office of director. The candidate receiving the highest number of votes ~~shall be~~ is elected.

At the primary election, votes must be canvassed, returned certified, and certificates of election issued in the manner provided by law for the election of county officers.

SECTION 2. REPEAL. Section 57-15-26.7 and chapter 61-24.2 of the North Dakota Century Code are repealed.

Approved March 22, 1993
Filed March 23, 1993

CHAPTER 608

SENATE BILL NO. 2329
(Senators Urlacher, Tennefos, Keller)
(Representatives Jacobs, A. Olson, Wald)

SOUTHWEST WATER AUTHORITY LEVIES

AN ACT to amend and reenact section 61-24.5-10 of the North Dakota Century Code, relating to the levying of taxes by the southwest water authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **61-24.5-10. District budget - Tax levy.** Beginning in ~~1992~~ 1991, and each year thereafter, through December 31, ~~1997~~ 1996, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. The power to levy a tax does not extend beyond December 31, ~~1997~~ 1996. All moneys collected pursuant to ~~such~~ the levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-12.1-11.

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

Approved March 10, 1993
Filed March 11, 1993

[1] NOTE: Section 61-24.5-10 was also amended by section 21 of House Bill No. 1045, chapter 45.

CHAPTER 609

HOUSE BILL NO. 1110
(Agriculture Committee)
(At the request of the Commissioner of Agriculture)

WATERBANK PROGRAM

AN ACT to amend and reenact sections 61-31-01, 61-31-02, 61-31-03, 61-31-04, 61-31-05, and 61-31-07 of the North Dakota Century Code, relating to the state waterbank program; and to repeal section 61-31-09 of the North Dakota Century Code, relating to notification of denied drainage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-31-01 of the North Dakota Century Code is amended and reenacted as follows:

61-31-01. Rulemaking authority. The commissioner of agriculture is authorized to adopt rules, pursuant to chapter 28-32, to implement this chapter~~, including rules setting out the procedures and payment rates designed to effectuate the terms of this chapter and the allocation of funds to those areas deemed most appropriate by the commissioner. This program is intended to supplement and complement the federal waterbank program and the payment rates established shall be at least comparable to federal rates~~.

SECTION 2. AMENDMENT. Section 61-31-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-31-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjacent lands" means lands bordering or within one-fourth mile of the wetland.
2. "Commissioner" means the commissioner of agriculture.
3. "Landowner" means the person, including a lessee, who has actual use and exclusive possession of the land.
4. "Participant" means the landowner participating in the program.
5. "Program" means the state waterbank program.
6. "State assessment team" means representatives from the department of agriculture, the game and fish department, the state engineer's staff, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.

~~2.~~ 7. "Wetlands" means ~~all types 3, 4, and 5 wetlands, as determined by the commissioner with the advice of the director of the game and fish department, in accordance with United States fish and wildlife service circular No. 39 (1971 edition)~~ a natural depressional area that is

capable of holding shallow, temporary, intermittent, or permanent water. It does not include sheetwater.

SECTION 3. AMENDMENT. Section 61-31-03 of the North Dakota Century Code is amended and reenacted as follows:

61-31-03. Waterbank agreements. The commissioner shall have authority to enter into agreements with landowners for the conservation of wetlands. These agreements shall be entered into for a period of five or ten years, with provision for renewal for additional five- or ten-year periods. The commissioner shall reexamine the payment rates at the beginning of the fifth year of any ten-year initial or renewal period and before the beginning of any renewal period~~, in the light of the current land and crop values,~~ and, providing that funds are available, make needed adjustments in rates for any initial or renewal period.

~~Wetlands eligible for inclusion in the waterbank program shall have all the following characteristics as determined by the commissioner:~~

~~1. Types 3, 4, or 5 as defined in the United States fish and wildlife circular No. 39 (1971 edition).~~

~~2. Drainage of the wetlands would be feasible and practical.~~

SECTION 4. AMENDMENT. Section 61-31-04 of the North Dakota Century Code is amended and reenacted as follows:

61-31-04. Duties of landowner. In the agreement between the commissioner and a landowner, the landowner shall agree:

1. To place in the program for the period of the agreement eligible wetland areas ~~he designates~~, together with such adjacent areas as determined desirable by the commissioner. These wetlands and adjacent areas may include areas covered by a federal or state government easement which permits agricultural use, except for federal waterbank agreements pursuant to the federal waterbank program [Pub. L. 91-559; 16 U.S.C. 1301 et seq.]. However, in the event that any eligible wetland and adjacent areas are covered by a separate federal or state government easement, the commissioner shall reduce payment rates as ~~he deems~~ appropriate.

2. Not to drain, burn, fill, or otherwise destroy the wetland character of such areas.

3. Not to use such areas for agricultural purposes, except as determined by the commissioner.

4. To effectuate a wetland conservation and development plan for ~~his~~ the land in accordance with the terms of the agreement, unless any requirement thereof is waived or modified by the commissioner pursuant to section 61-31-07.

5. To forfeit all rights to further payments or grants under the agreement and the commissioner may require the landowner to refund to the state all payments or grants received thereunder upon ~~his~~ violation of the agreement ~~at any stage during the time he has control of the land subject to the agreement~~ if the commissioner determines that such violation is of such a nature as to warrant termination of the agreement, or to make

refunds or accept such payment adjustments as the commissioner may deem appropriate if ~~he determines that~~ the violation ~~by the owner~~ does not warrant termination of the agreement.

6. Upon transfer of ~~his~~ the landowner's right and interest in the lands ~~subject to the agreement~~ during the agreement period, to forfeit all rights to further payments or grants under the agreement and the commissioner may require that landowner refund to the state all payments or grants received thereunder unless the transferee of any such land agrees with the commissioner to assume all obligations of the agreement.

7. ~~Not to adopt any practice specified by the commissioner in the agreement as a practice which would tend to defeat the purposes of the agreement.~~

~~8.~~ To additional provisions which the commissioner determines are desirable and includes in the agreement to effectuate the purposes of the program or to facilitate its administration.

The agreement of the landowner under this chapter shall be made binding on any tenant or operator of the land covered by the agreement~~, and the agreement shall so provide~~.

SECTION 5. AMENDMENT. Section 61-31-05 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-31-05. Duties of commissioner. In return for the agreement of the landowner, the commissioner shall:

1. Make an annual payment to the landowner for the period of the agreement at the rate determined by the commissioner to be fair and reasonable in consideration of the obligations undertaken by the landowner. If the landowner and commissioner agree, all or part of the payments to the landowner may be issued at the onset of the agreement.

2. ~~For the purposes of this chapter, provide~~ Provide advice on conservation and development practices on the wetlands and adjacent areas, and to bear such part of the average cost of establishing and maintaining such practices, as the commissioner determines to be appropriate. ~~In making this determination, the commissioner shall consider, among other things, the rate of compensation necessary to encourage owners of wetlands to participate in the waterbank program.~~

3. ~~To increase~~ Increase the rate ~~or rates~~ of annual payments ~~as determined hereunder,~~ by an amount determined by the commissioner to be appropriate, ~~in relation to the benefit to the general public of the use of the wetland areas, together with designated adjacent areas,~~ if the landowner agrees to permit, without other compensation, access to such acreage by the general public~~, during the agreement period, for hunting, trapping, fishing, and hiking,~~ subject to applicable state law.

4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank contract may be released to the landowner for haying or grazing, if the portion not released remains in a solid block, and if grazed is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The

release date must be determined by the commissioner with the approval of the director of the game and fish department. The landowner ~~has first option to~~ may hay or graze released land at a per-acre [.40 hectare] rate, established by the commissioner, which must be deducted from the next waterbank payment. ~~If the landowner does not qualify for emergency haying or grazing, the commissioner may conduct a lottery subject to the approval of the landowner, to award haying or grazing privileges to qualified applicants.~~ If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner is entitled to receive that person's full waterbank payment.

5. The commissioner shall assemble a state assessment team that may assist the commissioner in fulfilling the objectives of the program. The state assessment team may make recommendations to the commissioner regarding applications, and develop management guidelines to be approved by the commissioner which include technical and management practices and rates of payment and a standardized priority system for evaluating applications. Applications for the program may be submitted to any representatives of the state assessment team or their agencies to be reviewed and submitted to the commissioner.

SECTION 6. AMENDMENT. Section 61-31-07 of the North Dakota Century Code is amended and reenacted as follows:

61-31-07. Termination of agreement. The commissioner may terminate or amend any agreement by mutual agreement with the landowner if the commissioner determines that the termination would be in the public interest~~, and may agree to any modification of agreements he may determine to be desirable to further the purposes of the program or facilitate its administration~~.

SECTION 7. REPEAL. Section 61-31-09 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 1, 1993
Filed April 2, 1993

WEEDS

CHAPTER 610

SENATE BILL NO. 2523
(Senators O'Connell, Keller, Thane)
(Representatives Brown, Mahoney, Nicholas)

WEEDS

AN ACT to amend and reenact sections 63-01.1-02, 63-01.1-03, 63-01.1-04, 63-01.1-04.1, 63-01.1-05, 63-01.1-05.1, 63-01.1-06, 63-01.1-08, 63-01.1-12.1, 63-01.1-12.2, 63-01.1-13, and 63-01.1-15 of the North Dakota Century Code, relating to noxious weed control and pest control by county weed boards; and to repeal sections 63-01.1-06.1, 63-01.1-06.2, 63-01.1-06.3, 63-01.1-06.4, 63-01.1-06.5, 63-01.1-06.6, 63-01.1-13.1, 63-01.1-16, and 63-01.1-17 of the North Dakota Century Code and sections 2, 3, 4, 6, 7, 9, and 10 of House Bill No. 1054, as approved by the fifty-third legislative assembly, relating to the leafy spurge and cannabis control programs, the control of noxious weeds on game and fish property, judicial review of rules, actions, and penalties relating to noxious weed control, and pest control by county weed boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 63-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

[1] **63-01.1-02. Definitions.** As used in this chapter:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.
2. "Commissioner" means the ~~North Dakota state~~ commissioner of agriculture or the commissioner's designee.
3. "Control" means to prevent the spread of any noxious weed, designated by the commissioner or other control authority, by seed or any other propagating part or, if authorized, to suppress, eradicate, or prevent or retard the spread of a pest.
4. "Control authority" means the commissioner ~~and those he may designate to act in his behalf~~, ~~and~~ the county weed board, and, pursuant to the county weed board's authorization, the county weed control officer.
5. "County weed board" means members of the board of each county as appointed ~~by the county commissioners of the county~~ pursuant to section 63-01.1-04.

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[1] NOTE: Section 63-01.1-02 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

6. "County weed control officer" means the person ~~appointed or~~ designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.

7. "Eradicate" or "eradication" means to destroy a plant or, if authorized, a pest so that it is not viable.

8. "Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise~~, but~~. The term does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.

9. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the North Dakota state ~~cooperative~~ university extension service, or a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.

10. "Operator" means the person chiefly responsible for the farming or other operations being performed on the land, whether for self-benefit, or for the benefit of the landowner or another.

11. "Person" means any individual, partnership, firm, corporation, company, society, association, the state, or any department, agency, or subdivision thereof, or any other entity which occupies or owns land or which causes noxious weed seeds or propagating parts to be disseminated or transported in ~~North Dakota~~ this state.

12. "Pest" means any pest as defined in section 4-33-01.

13. "Township road" means a public road ~~which~~ that is an improved road, constructed, maintained, graded, and drained by the township, or county in the case of an unorganized township. A township road includes a street in an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. In order for a section line to be a township road it must be graded and drained and be an improved maintained road. A township road is a public road ~~which~~ that is not designated as part of a county, state, or federal-aid road system and is not located in an incorporated city.

SECTION 2. AMENDMENT. Section 63-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03. State weed control authority - Commissioner of agriculture - Powers and duties.

1. The duty of enforcing this chapter and carrying out its provisions and intent is vested in the commissioner ~~who may designate employees of his department and local weed control officers to act in his behalf, but under his supervision and direction~~. The commissioner shall cooperate with other weed control authorities.

2. The commissioner shall determine which weeds are noxious for the purposes of a state list of noxious weeds after consulting with the North Dakota

state ~~cooperative~~ university extension service, and shall compile and keep current a list of ~~such~~ noxious weeds.

3. The commissioner shall outline procedures, prepare and supply official notices, posters, report forms, and ~~such~~ other documents ~~as are~~ needed in carrying out ~~the provisions of~~ this chapter. ~~Such~~ The commissioner shall supply these documents ~~shall be supplied~~ to weed control officers, county, township, and city authorities, and others as needed to carry out an effective weed control program. ~~Official~~ or, if authorized, pest control program. The commissioner shall prepare notices or posters ~~such as~~ including the noxious weed list, rules ~~and regulations~~, dates for controlling, and other compliance requirements ~~shall be prepared by the commissioner ready~~ for printing in official newspapers~~,~~ or for posting at least annually.

4. The commissioner shall cooperate with the county weed board, county weed control officers, highway patrol officers, county sheriffs, ~~the truck regulatory division,~~ and others in ~~carrying out his duties under~~ enforcing this chapter. ~~He~~ The commissioner shall also encourage the North Dakota state ~~cooperative~~ university extension service to disseminate information and to conduct educational campaigns with respect to eradication and control of noxious weeds or, if authorized, pests.

5. The commissioner upon receiving ~~complaints in writing from persons~~ a written complaint shall immediately refer the complaint to the proper weed control officer or control authority.

6. The commissioner shall encourage the cooperation of ~~program~~ agencies of both the federal and state governments in furtherance of the purposes of this chapter.

7. The commissioner ~~shall prescribe, in accordance with chapter 28-32, and cause to be published, such rules, regulations, and procedures as he deems necessary~~ may adopt rules to carry out the intent of this chapter.

8. The commissioner ~~shall~~ may require ~~a minimum number of~~ operational or program reports from weed control authorities or weed control officers ~~as deemed necessary to keep posted on~~ regarding weed control progress and activity in the state and, if authorized, pest control progress and activity in the state.

9. The commissioner shall call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and may also request the North Dakota state university extension service or others to present educational information on weed control practices or, if authorized, pest control practices. Weed control authority members ~~shall~~ must be invited to attend meetings called pursuant to this subsection.

SECTION 3. AMENDMENT. Section 63-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04. County weed board as control authority.

1. The county weed board of each county ~~in the state shall be~~ is the control authority for that county.

2. ~~The board of county commissioners of each county shall hold a public meeting for appointing a county weed board prior to July 21, 1981. Prior to the meeting the board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area shall be contiguous. Notice of the meeting shall be given in the same manner as other election notices are posted.~~

~~3.~~ The board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area must be contiguous. The board of county commissioners shall appoint a county weed board ~~which shall consist~~ consisting of five or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms of members ~~shall~~ must be staggered so that the terms of no more than two members ~~shall~~ expire each year. Any qualified elector~~,~~ in the board member area ~~he is appointed to represent,~~ is eligible ~~for membership~~ to represent that area on the board.

~~4. All county weed board members shall be appointed by the board of county commissioners prior to August 5, 1981.~~ In ~~counties~~ each county encompassing ~~cities or towns~~ a city with a population of five thousand or more, one board member ~~shall~~ must be appointed from within the city limits of ~~a~~ that city ~~or town~~.

3. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.

~~5.~~ 4. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failure to attend meetings or for refusal or incapacity to act as a board member. When a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual, who possesses the necessary qualifications, as a board member to fill the unexpired term.

~~6.~~ 5. ~~At its first regular meeting, the~~ The county weed board shall elect from its members a chairman and a vice chairman, and appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board. The board of county commissioners may set rates of compensation for board members. Board members are entitled to reimbursement for actual and necessary expenses and a mileage allowance at the rate established for state employees.

SECTION 4. AMENDMENT. Section 63-01.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04.1. Powers and duties of county weed board.

1. The county weed board shall ~~appoint or~~ designate a county weed control officer who shall cooperate with the board and be responsible for operation and enforcement of this chapter within the district. The officer may be a member of the county weed board or may be any other interested and able person. The same person may serve as weed control

officer for more than one county weed board. Employment ~~shall be~~ is for a tenure and at rates of compensation and reimbursement for travel expenses as the county weed board may prescribe and ~~shall be~~ is without regard to any provisions of law relating to age or dual compensation. The ~~appointment or~~ county weed board shall certify the designation of a county weed control officer ~~shall be certified by the county weed board~~ to the commissioner.

2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.

3. The county weed board may develop and compile a county list of noxious weeds. Any county list shall, at a minimum, contain those noxious weeds determined by the commissioner. The commissioner may remove a county weed board noxious weed determination from the county list after consulting with the board and the North Dakota state ~~cooperative~~ university extension service.

4. County weed boards shall cooperate with all other control authorities.

5. The county weed board shall implement and pursue an effective program for control of noxious weeds and, if authorized, pests.

6. The county weed board shall fix the time and place of regular meetings~~, which~~. The board shall ~~occur~~ meet at least once each year and ~~shall be~~ the meeting is open to the public. ~~The first regular meeting shall be held prior to August 15, 1981.~~ The board shall keep minutes of all meetings and a complete record of all official acts.

7. The county weed board shall make at least one annual inspection to determine the progress of weed control activities within the county and, if authorized, the progress of pest control activities within the county.

8. The county weed board shall control and disburse all moneys received by the county, for weed control, from any source.

9. The county weed board shall render technical assistance to any city with a population of three thousand or more which establishes a program as provided in section 63-01.1-10.1.

10. The county weed board may authorize the county weed control officer in cooperation with local law enforcement personnel to stop and inspect vehicles suspected of transporting noxious weed-infested materials.

SECTION 5. AMENDMENT. Section 63-01.1-05 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-05. Duties of county weed control officer. The county weed control officer shall:

1. Cooperate with the county weed board, other control authorities and weed control officers, the county extension agent, county land users, the commissioner, and others in furtherance of the provisions of this chapter.

2. Become acquainted with the location of noxious weeds and, if authorized, pests on all land within the county.

3. Through personal contact, by letter, telephone, or other means, encourage noxious weed and, if authorized, pest control or eradication by all landowners or occupants within the county.

4. Investigate all complaints received by ~~himself~~ the county weed control officer, the county weed board, or the commissioner. ~~If the weed control officer determines that the complaint is justified, he shall personally serve upon the landowner written notice, or shall issue written notice by certified mail to the address of the landowner requiring the landowner to control or eradicate noxious weeds on his land within five days, unless additional time is requested from and granted by the county weed board. A copy of the written notice shall be sent by certified mail to the address of any lessee, tenant, renter, or operator of the land. If the landowner resides in another state, an additional time of not less than ten days shall be granted to the landowner for control and eradication purposes. The weed control officer may, upon failure by the landowner to do so in the time limits provided, cause noxious weeds to be controlled or eradicated and the expenses to be charged against the land of the landowner.~~

~~When noxious weeds in an area of more than three acres [1.21 hectares] in each forty-acre [16.19-hectare] area, in which a crop or trees are growing, are to be controlled, or eradicated because of infestations of noxious weeds, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the controlling or eradication of the noxious weeds on the land, and the controlling or eradication shall not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.~~

~~The expenses charged shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto, or the landowner shall be subject to the penalties provided in section 63-01.1-15. Complaints, subject to the approval of the weed board, may be initiated by the weed control officer, and notice served in accordance with this subsection.~~

5. Take proper enforcement action when necessary.

~~5.~~ 6. Cause to be posted or inserted in official newspapers those official notices the commissioner may deem necessary in the furtherance of this chapter.

~~6.~~ 7. Prepare reports as requested by the commissioner.

~~7.~~ 8. Attend area or statewide meetings called by the commissioner for the purpose of assisting in the effective execution of this chapter.

~~8.~~ 9. Serve as county seed inspector for the purposes of enforcing the laws and regulations under the jurisdiction of the ~~North Dakota~~ state seed department as ~~shall be~~ directed by the state seed commissioner.

SECTION 6. AMENDMENT. Section 63-01.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-05.1. Certification of county weed control officers - Extension ~~division educational program~~ service.

1. The commissioner shall adopt rules setting ~~forth~~ the requirements for certification categories of county weed control officers, after consultation with the director of the agricultural experiment station and the director of the North Dakota state university extension ~~division, Fargo~~ service, or their respective designees. ~~The commissioner shall certify all persons meeting the established requirements.~~ All ~~appointed or~~ designated county weed control officers ~~shall~~ must be certified pursuant to the rules ~~and requirements~~ adopted by the commissioner before assuming their duties ~~pursuant to this chapter~~.

2. The ~~extension division of~~ North Dakota state university ~~of agriculture and applied science~~ extension service shall establish a program ~~designed~~ to provide educational instruction ~~sufficient to comply with the requirements of certification adopted by the commissioner. The program shall be offered~~ to local weed control officers ~~at reasonable times and places as determined by the director of the extension division~~.

SECTION 7. AMENDMENT. Section 63-01.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-06. Funding of programs.

1. The board of county commissioners may pay expenses from the general fund in any one year in furtherance of this chapter, including weed control along public highways in the county. The county weed board may certify annually to the board of county commissioners a tax, not to exceed two mills on the taxable valuation of all taxable property in the county, to carry out ~~the provisions of~~ this chapter. In addition, the county weed board, with the approval of a majority vote of the board of county commissioners, may certify up to two additional mills on the taxable valuation of all taxable property in the county. If a county assesses more than three mills, at least one mill must be dedicated to leafy spurge control. However, the tax ~~shall~~ may not be levied on property within the corporate limits of a city ~~which~~ that establishes a program under section 63-01.1-10.1. The ~~tax shall be levied by the~~ board of county commissioners shall levy the tax. ~~All~~ The county treasurer shall hold all taxes levied and collected ~~shall be held by the county treasurer~~ in ~~a~~ separate ~~fund~~ funds to be known as the weed control fund and the leafy spurge fund, which shall be used ~~only~~ to carry out ~~the provisions of~~ this chapter. The levy shall be made to cover the salary and expenses of the county weed board, county weed control officer, the expense of weed control along public highways in the county, and other expenses incurred in the operation of an effective weed control program in the county. The

tax may be levied in excess of the mill levy limit prescribed by law for general purposes.

2. The commissioner shall allocate the funds of any legislative appropriation to the county weed boards and cities which establish a program under section 63-01.1-10.1 pursuant to a formula adopted by the commissioner, after consultation with ~~the director of the extension service and the director of the agricultural experiment station, Fargo, or their respective designees. No county weed board may receive an amount under this subsection which, when added to the amount generated by a tax levy of three mills on the taxable valuation of all taxable property in the county, would exceed eighty percent of the total cost of the actual expenditures for noxious weed control~~ county weed boards. Landowners shall contribute a minimum of twenty percent of the cost of noxious weed control on their land. No county weed board or city ~~shall~~ may receive an amount in excess of one-half of ~~its~~ the board's or city's actual expenditures for noxious weed control from any legislative appropriation, unless the appropriation provides assistance in noxious weed control to a board or city under subsection 3.

3. If a county weed board determines a weed is seriously endangering areas of a county or the state, assistance in control may be provided by legislative appropriation ~~for this purpose, the~~. The commissioner shall allocate the appropriation accordingly, and the commissioner and each affected county weed board and city which establishes a program under section 63-01.1-10.1 shall be responsible for ensuring that the funds are properly expended.

4. To be eligible to receive state cost share funds a county shall levy a minimum of three mills for noxious weed or leafy spurge control. The request for allocated funds pursuant to subsections 2 and 3 ~~shall~~ must be initiated by the county weed board or city which establishes a program under section 63-01.1-10.1 by submitting a voucher and documentation. Upon approval of the voucher and documentation by the commissioner, ~~payment shall be made by~~ the office of management and budget shall make the payment out of funds appropriated for control of weeds.

SECTION 8. AMENDMENT. Section 63-01.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-08. Entry upon land for weed control purposes - Notices - Landowner rights - **Remedial requirements - Liens - Penalty.**

1. ~~The commissioner, any~~ Any control authority~~, county weed control officer,~~ or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds or, if authorized, pests or other materials, without the consent of the landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

2. If any land is found to be infested with noxious weeds or, if authorized, pests by ~~the commissioner,~~ any control authority, ~~county weed control~~

~~officer, or other authorized person, the county weed board, by resolution adopted by two-thirds of its members, may confirm the fact. The board may set forth minimum remedial requirements for control of the infested property. The board shall deliver, personally or by certified mail, to the address of the landowner of the infested land:~~

~~a. A copy of the resolution.~~

~~b. A statement of the cost of fulfilling the requirements for control.~~

~~c. A request that the requirements contained in the resolution be carried out at the landowner's expense within five days, unless additional time is requested from and granted by the board, or on a cooperative basis. If the landowner resides in another state, an additional time of not less than thirty days shall be granted to the landowner for control and eradication purposes.~~

~~3. A copy of the resolution shall be sent by certified mail to any lessee, renter, tenant, or operator of the land.~~

~~4. A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weeds on the infested area within the time designated may be fined not more than fifty dollars per day for each day of violation and not more than a total of two thousand five hundred dollars per year as determined by the district court. Any person accused of failure to perform remedial requirements under this section is entitled to a trial by jury, upon request. The accumulated fines under this section are a lien against the property of the landowner from the day the resolution is delivered to the landowner by the weed board. All fines collected pursuant to this section shall be deposited with the treasurer of the political subdivision and credited to the weed board noxious weed control fund in the political subdivision in which the fine originated.~~

~~5. When noxious weeds in an area of more than three acres [1.21 hectares] in each forty-acre [16.19-hectare] area, in which crop or trees are growing, are to be controlled or eradicated because of infestations of noxious weeds, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the controlling or eradication of the noxious weeds on the land, and the controlling or eradication shall not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.~~ the county weed control officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control or eradicate the noxious weeds or, if authorized, pests within the time period prescribed by the county weed control officer. If the landowner resides in another state, the landowner shall control or eradicate the noxious weeds or, if authorized, pests within the time period prescribed by the county weed control officer. Additional time may be requested from the county weed board. The notice must specify the landowner may be subject to the penalties provided in section 63-01.1-15 if the landowner fails to comply. The notice must specify minimal remedial requirements. A copy of the notice may be sent by certified mail to any tenant, lessee, or operator of the land. If the county weed board will control the weeds

or, if authorized, pests upon failure of the landowner to control the weeds or, if authorized, pests, the notice must also include a statement of costs. If the landowner does not control or eradicate the noxious weeds or, if authorized, pests within the specified time, the county weed control officer may cause the noxious weeds or, if authorized, pests to be controlled or eradicated and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes. If the county weed board intends to control the weeds or, if authorized, pests, the notice must include a statement informing the landowner that the landowner may request the county weed board not to control the weeds or, if authorized, pests. If the landowner requests the county weed board not to control the weeds or, if authorized, pests, the board may not control the weeds or, if authorized, pests until by a majority vote of the board control is authorized.

SECTION 9. AMENDMENT. Section 63-01.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-12.1. Quarantine period - ~~Farm~~ Materials or farm products and area defined.

1. Whenever the commissioner, the county weed board, or anyone authorized thereby finds any area of the state to be infested with noxious weeds, and it is established that materials or farm products from that area are liable to spread noxious weeds into other areas to the injury of others, the commissioner shall, without unnecessary delay, declare a quarantine against the area to prevent the transfer of materials or farm products from the quarantined area. When it is ascertained that noxious weeds are likely to be introduced into ~~North Dakota~~ this state by the importation of materials or farm products, the commissioner shall declare a quarantine against the importation of those materials or farm products.

2. The commissioner shall declare an individual county quarantine when requested by resolution adopted by a two-thirds majority of the county weed board of the county in which the quarantine is to be declared.

3. For the purposes of this section, "area" means a geographical section of land as identified by the commissioner, which may include cities and counties or any portion of a city or county~~.~~

~~4. For the purposes of this section,~~; "farm products" means all crops, crop products, plants or portions thereof, but shall not mean livestock; and "materials" means gravel or other substances that can be transported over a state highway.

SECTION 10. AMENDMENT. Section 63-01.1-12.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-12.2. Noxious weed certification - Gravel and sand pits and hay land.

1. The commissioner, after consultation with the ~~cooperative~~ North Dakota state university extension service, ~~shall~~ may adopt ~~standards~~ rules for certifying that gravel or sand surface mining operations and ~~hay produced~~

land producing hay for sale or for resale are not contaminated with noxious weeds. The ~~standards~~ rules must identify the extent noxious weeds are allowed with certification.

2. The county weed board ~~may~~, after consultation with the ~~cooperative~~ North Dakota state university extension service, may certify gravel or sand surface mining operations and ~~hay produced~~ land producing hay for sale or for resale as not contaminated with noxious weeds.

3. The commissioner shall adopt a schedule of fees that county weed boards and the ~~cooperative~~ North Dakota state university extension service may charge for inspecting, testing, analyzing, and certifying gravel or sand surface mining operations and hay land.

4. Certification of gravel or sand surface mining operations or hay land is not a warranty of any kind as to the quality of the gravel, sand, or hay produced from an inspected and certified~~, including merchantability, fitness for a particular purpose, or absence of contamination of any kind~~ location. The only representation made is that ~~a gravel or sand surface mining operation or hay produced~~ land from which sand and gravel is surface mined or land producing hay for sale or resale has been inspected for contamination by noxious weeds under rules adopted by the commissioner.

SECTION 11. AMENDMENT. Section 63-01.1-13 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13. Publicly owned land - Weed and pest control.

1. The commissioner shall ~~make every effort possible~~ attempt to arrange a satisfactory noxious weed and pest eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control officers shall ~~make every effort possible~~ attempt to arrange a satisfactory noxious weed or, if authorized, pest eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds and pests on such lands. ~~In the event that agencies coming within the provisions of this section shall fail or refuse to eradicate or control noxious weeds in accordance with this section~~ Upon failure of a state agency to adequately control noxious weeds or, if authorized, pests on land under its control, the county weed board for the county in which all or a portion of the land is located, upon approval of the commissioner, may enter upon the land to control the noxious weeds and, if authorized, pests. The state agency shall reimburse the county weed board for expenses incurred in the control of noxious weeds or, if authorized, pests pursuant to this section within thirty days after the agency receives the bill.

2. A federal agency shall develop a management program for controlling noxious weeds or, if authorized, pests on land the agency controls or over which the agency has jurisdiction. If a federal agency does not control or set up a management program to the satisfaction of the weed

control authority, the weed control office shall notify the agency as provided in section 63-01.1-08. The federal agency shall provide a report to the commissioner and the county weed authorities describing the methods used by the federal agency and showing cause why the federal agency is not controlling the noxious weeds or, if authorized, pests. The commissioner may specify the forms on which the federal agency report must be submitted.

3. Upon being notified by a county of the federal agency's failure to control noxious weeds or, if authorized, pests, the commissioner may hold a public hearing under such conditions and terms as ~~he shall deem~~ the commissioner determines advisable, to determine the reason for ~~such~~ the failure or refusal.

SECTION 12. AMENDMENT. Section 63-01.1-15 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-15. Penalties.

1. ~~Custom~~ A custom or commercial ~~operators~~ operator of tillage, seeding, and harvesting equipment who ~~violate the provisions of~~ violates subsection 2 of section 63-01.1-12 ~~shall be~~ is guilty of a class B misdemeanor. ~~The weed control officers or~~ A control ~~authorities shall~~ authority may institute necessary criminal actions under this subsection.

2. Persons failing to comply with the rules~~, regulations,~~ and ~~notices promulgated pursuant to the~~ notice provisions of this chapter ~~shall be~~ are subject to a civil penalty not to exceed ~~five hundred dollars. Necessary court action may be pursued by the weed control officer or authority~~ fifty dollars per day for each day of violation, subject to a maximum penalty of two thousand five hundred dollars per year. The accumulated penalties under this section are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 63-01.1-08. All penalties collected pursuant to this section must be deposited with the treasurer of the political subdivision and credited to the weed control fund in the political subdivision in which the penalty originated. Penalties collected pursuant to this section for failure or refusal to perform remedial requirements for the control of pests on an infested area must be credited to the weed control fund in the political subdivision in which the penalty originated but dedicated for use by the county weed board to control pests. The penalty may be adjudicated by the courts or by the county weed board after a hearing. An aggrieved landowner may appeal the imposition of a penalty by the county weed board to the board of county commissioners.

SECTION 13. REPEAL. Sections 63-01.1-06.1, 63-01.1-06.3, 63-01.1-06.4, 63-01.1-16, and 63-01.1-17 of the North Dakota Century Code, sections 63-01.1-06.2, 63-01.1-06.5, 63-01.1-06.6, and 63-01.1-13.1 of the 1991 Supplement to the North Dakota Century Code, and sections 2, 3, 4, 6, 7, 9, and 10 of House Bill No. 1054, as approved by the fifty-third legislative assembly, are repealed.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 611

HOUSE BILL NO. 1288
(Representatives Aarsvold, Allmaras, Hagle, Johnson)
(Senator Dotzenrod)

WEED CUTTING SPECIFICATIONS

AN ACT to amend and reenact section 63-05-02 of the North Dakota Century Code, relating to the cutting of weeds and grasses along county and township highways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 63-05-02 of the North Dakota Century Code is amended and reenacted as follows:

63-05-02. Designation of time for cutting - Notice. The board of county commissioners of each county shall prescribe the time for cutting of the weeds and grasses, prescribe the height of stubble to be left and the minimum width of the cuts, designate the county highways along which weeds and grasses shall be cut, and request the board of township supervisors to designate township roads along which weeds and grasses shall be cut. The board of township supervisors shall make the designation, and the board of county commissioners shall publish notice of the designated highways ~~and~~, the time for cutting, and the height of stubble to be left and the minimum width of cut in the official county newspaper at least twice, and the last publication shall appear not less than two weeks prior to the deadline date. If no official newspaper is published in the county, written notice ~~shall~~ must be given by posting, in the same manner as election notices are posted. Expenses incurred in publishing the notice ~~shall~~ must be paid from funds provided in section 63-01.1-06 by the board of county commissioners.

Approved March 15, 1993
Filed March 16, 1993

WEIGHTS, MEASURES, AND GRADES

CHAPTER 612

SENATE BILL NO. 2219
(Agriculture Committee)
(At the request of the Public Service Commission)

WEIGHTS AND MEASURE CALIBRATION FEES

AN ACT to amend and reenact section 64-02-10 of the North Dakota Century Code, relating to the fees to test or calibrate weighing and measuring devices; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 64-02-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

64-02-10. Fees to test or calibrate weighing and measuring devices. The commission shall collect the following fees to:

1.	Test railroad track scale	~~$80.00~~ $88.00
2.	Test livestock or vehicle scale eight thousand pounds [3628.74 kilograms] capacity and under	~~35.00~~ 39.00
3.	Test livestock and vehicle scale over eight thousand pounds [3628.74 kilograms] capacity	~~80.00~~ 88.00
4.	Test livestock scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture	~~80.00~~ 88.00
5.	Test livestock scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture, if the sales ring or buying station scale owner transports to the scale and furnishes all test weights and manpower needed to properly test the scale	~~45.00~~ 50.00
6.	Test auxiliary beam on livestock, motor truck, motor truck dump scale	~~15.00~~ 17.00
7.	Test road construction truck scale	~~80.00~~ 88.00
8.	Test road construction hopper scale, six thousand and one pounds [2722.01 kilograms] capacity and over	~~35.00~~ 39.00
9.	Test overhead track, hopper,	

	dormant, and hanging scale six thousand pounds [2721.55 kilograms] capacity and over	~~35.00~~ 39.00
	Test overhead track, dormant, hanging, and hopper scale five thousand nine hundred ninety-nine pounds [2721.10 kilograms] and less capacity	~~20.00~~ 22.00
10.	Test movable platform scale	~~6.00~~ 7.00
11.	Test counter or computing scale	~~6.00~~ 7.00
12.	Test every patent balance, beam steel yard, or other instrument used for weighing other than the above	~~6.00~~ 7.00
13.	Test two-bushel [70.48-liter] or one-bushel [35.24-liter] measure	~~6.00~~ 7.00
14.	Test other dry measure	~~6.00~~ 7.00
15.	Test board of cloth measure	~~6.00~~ 7.00
16.	Test liquid ~~measure~~ or gas computing pump	~~6.00~~ 7.00
17.	Test liquid ~~measure~~ or gas computing pump in addition to the regularly scheduled annual inspection, including inspections made for new equipment which replaces a rejected measuring device	~~6.00~~ 7.00
18.	Test ~~liquid measures of five gallons [18.93 liters] or less capacity~~ or calibrate weighing and measuring standards, per quarter hour or fraction thereof	~~6.00~~ 12.50
19.	Test mobile delivery gasoline and fuel oil meter	~~15.00~~ 17.00
20.	Test gasoline or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports, or other conveyances	~~35.00~~ 39.00
21.	Test propane or liquid fertilizer meter	~~25.00~~ 28.00

22.	Test truck tank of one thousand gallons [3785.41 liters] capacity and under	~~30.00~~ 33.00
	Test truck tank between one thousand and one gallons [3789.10 liters] and six thousand gallons [22712.47 liters]	~~40.00~~ 44.00
	Test truck tank above six thousand gallons [22712.47 liters]	~~50.00~~ 55.00
23.	Test crane scale six thousand pounds [2721.55 kilograms] and less capacity	~~30.00~~ 33.00
	Test crane scale six thousand and one pounds [2722.01 kilograms] capacity and over	~~50.00~~ 55.00
24.	Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof	~~7.50~~ 8.00

When a rejected weighing or measuring device has been reconditioned or replaced by new equipment, it must be retested and certified before being put into use except as otherwise provided by rule. The fee for retest and certification is the same as for the first test and certification.

When a test of a weighing or measuring device is required in addition to the regularly scheduled annual test, a charge of ~~fifty~~ fifty-five cents per mile [1.61 kilometers] will be made unless the motor vehicle, including the testing equipment necessary to perform the test weighs less than ten thousand pounds [4535.92 kilograms] gross. If the motor vehicle weighs less than ten thousand pounds [4535.92 kilograms] gross, a charge of ~~twenty-five~~ thirty cents per mile [1.61 kilometers] will be made, and all mileage charges are in addition to the regular test fee to cover the costs of the additional travel. Where a test has been requested and the person requesting it fails to appear or to have the weighing or measuring device ready for testing at the arranged time, there is a charge of ~~seven dollars and fifty cents~~ eight dollars a quarter hour for the time between the arranged time and the time at which the test can begin.

SECTION 2. AMENDMENT. Section 64-02-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

64-02-10. Fees to test or calibrate weighing and measuring devices. The commission shall collect the following fees to:

1.	Test railroad track scale	~~$80.00~~ $97.00
2.	Test livestock or vehicle scale eight thousand pounds [3628.74 kilograms] capacity	

	and under	~~35.00~~ 43.00
3.	Test livestock and vehicle scale over eight thousand pounds [3628.74 kilograms] capacity	~~80.00~~ 97.00
4.	Test livestock scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture	~~80.00~~ 97.00
5.	Test livestock scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture, if the sales ring or buying station scale owner transports to the scale and furnishes all test weights and manpower needed to properly test the scale	~~45.00~~ 55.00
6.	Test auxiliary beam on livestock, motor truck, motor truck dump scale	~~15.00~~ 19.00
7.	Test road construction truck scale	~~80.00~~ 97.00
8.	Test road construction hopper scale, six thousand and one pounds [2722.01 kilograms] capacity and over	~~35.00~~ 43.00
9.	Test overhead track, hopper, dormant, and hanging scale six thousand pounds [2721.55 kilograms] capacity and over	~~35.00~~ 43.00
	Test overhead track, dormant, hanging, and hopper scale five thousand nine hundred ninety-nine pounds [2721.10 kilograms] and less capacity	~~20.00~~ 24.00
10.	Test movable platform scale	~~6.00~~ 8.00
11.	Test counter or computing scale	~~6.00~~ 8.00
12.	Test every patent balance, beam steel yard, or other instrument used for weighing other than the above	~~6.00~~ 8.00
13.	Test two-bushel [70.48-liter] or one-bushel [35.24-liter] measure	~~6.00~~ 8.00
14.	Test other dry measure	~~6.00~~ 8.00
15.	Test board of cloth measure	~~6.00~~ 8.00

16.	Test liquid ~~measure~~ or gas computing pump	~~6.00~~ 8.00
17.	Test liquid ~~measure~~ or gas computing pump in addition to the regularly scheduled annual inspection, including inspections made for new equipment which replaces a rejected measuring device	~~6.00~~ 8.00
18.	Test ~~liquid measures of five gallons [18.93 liters] or less capacity~~ or calibrate weighing and measuring standards, per quarter hour or fraction thereof	~~6.00~~ 12.50
19.	Test mobile delivery gasoline and fuel oil meter	~~15.00~~ 19.00
20.	Test gasoline or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports, or other conveyances	~~35.00~~ 43.00
21.	Test propane or liquid fertilizer meter	~~25.00~~ 31.00
22.	Test truck tank of one thousand gallons [3785.41 liters] capacity and under	~~30.00~~ 36.00
	Test truck tank between one thousand and one gallons [3789.10 liters] and six thousand gallons [22712.47 liters]	~~40.00~~ 48.00
	Test truck tank above six thousand gallons [22712.47 liters]	~~50.00~~ 61.00
23.	Test crane scale six thousand pounds [2721.55 kilograms] and less capacity	~~30.00~~ 36.00
	Test crane scale six thousand and one pounds [2722.01 kilograms] capacity and over	~~50.00~~ 61.00
24.	Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof	~~7.50~~ 9.00

When a rejected weighing or measuring device has been reconditioned or replaced by new equipment, it must be retested and certified before being put into use except as otherwise provided by rule. The fee for retest and certification is the same as for the first test and certification.

When a test of a weighing or measuring device is required in addition to the regularly scheduled annual test, a charge of ~~fifty~~ sixty cents per mile [1.61 kilometers] will be made unless the motor vehicle, including the testing equipment necessary to perform the test weighs less than ten thousand pounds [4535.92 kilograms] gross. If the motor vehicle weighs less than ten thousand pounds [4535.92 kilograms] gross, a charge of ~~twenty-five~~ thirty-five cents per mile [1.61 kilometers] will be made, and all mileage charges are in addition to the regular test fee to cover the costs of the additional travel. Where a test has been requested and the person requesting it fails to appear or to have the weighing or measuring device ready for testing at the arranged time, there is a charge of ~~seven dollars and fifty cents~~ nine dollars a quarter hour for the time between the arranged time and the time at which the test can begin.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective July 1, 1994.

SECTION 4. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 1994, and after that date is ineffective.

Approved March 24, 1993
Filed March 25, 1993

WORKERS' COMPENSATION

CHAPTER 613

HOUSE BILL NO. 1039
(Legislative Council)
(Interim Industry, Business and Labor Committee)

WORKERS COMPENSATION BUREAU-JOB SERVICE MERGER REPEAL

AN ACT to amend and reenact subsection 6 of section 65-01-02, sections 65-02-07, and 65-04-10 of the North Dakota Century Code and section 77 of chapter 714 of the 1991 Session Laws of North Dakota, relating to the workers compensation bureau and the effective date of the merger of the workers compensation bureau and job service North Dakota; to repeal sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 27, 28, 33, and 75 of chapter 714 of the 1991 Session Laws of North Dakota and the amendments to subsections 6 and 11 of section 65-01-02 of the North Dakota Century Code as provided by section 23 of chapter 714 of the 1991 Session Laws of North Dakota, relating to the references to the workers compensation bureau and job service North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Bureau" means the North Dakota workers compensation bureau, or ~~any~~ the director, or any department heads, assistants, or employees of the bureau designated by the director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.

SECTION 2. AMENDMENT. Section 65-02-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-07. Bureau to have seal. The bureau shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "~~Workmen's~~ Workers Compensation Bureau - North Dakota - Seal".

SECTION 3. AMENDMENT. Section 65-04-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-10. Provision relating to compensation required in contractor's bonds. There ~~shall~~ must be inserted in every bond given by a contractor doing work for the state of North Dakota or for any political subdivision thereof, in addition to the general provisions for the faithful and complete performance of all work required under ~~such~~ the contract, this further provision: That the ~~said~~ contractor has made, or will make, prior to the commencement of any work by ~~himself~~ the contractor or any subcontractor under ~~such~~ the contract, full and true report to the ~~workmen's~~ workers compensation bureau of the payroll expenditures for the employees to be engaged in ~~such~~ the work, and that ~~he~~ the contractor has paid, or will pay, the premium thereon prior to the commencement of ~~such~~ the work.

SECTION 4. AMENDMENT. Section 77 of chapter 714 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 77. APPLICATION - EFFECTIVE DATE. Sections 55, 57, 58, and 59 of this Act apply to any rehabilitation award made on or after the effective date of this Act, irrespective of the date of injury. ~~Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 28, 33, and 75 of this Act and the amendment to subsections 6 and 11 of section 65-01-02 as provided by section 23 of this Act becomes effective on July 1, 1993.~~ Section 32 of this Act becomes effective on January 1, 1994. The remainder of this Act is retroactive to July 1, 1991. ~~Any moneys needed to implement the consolidation of the workers compensation bureau and job service North Dakota must be appropriated out of the general fund, for that purpose, by the fifty-third legislative assembly.~~

SECTION 5. REPEAL. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 27, 28, 33, and 75 of chapter 714 of the 1991 Session Laws of North Dakota and the amendments to subsections 6 and 11 of section 65-01-02 of the North Dakota Century Code as provided by section 23 of chapter 714 of the 1991 Session Laws of North Dakota are hereby repealed.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 614

SENATE BILL NO. 2200
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION BENEFITS AND PROCEDURES

AN ACT to create and enact a new subsection to section 65-01-02 of the North Dakota Century Code, relating to workers' compensation definitions; to amend and reenact paragraph 2 of subdivision b of subsection 8 of section 65-01-02, subsection 30 of section 65-01-02, sections 65-01-11, 65-02-15, 65-02-17, 65-02-18, 65-04-04, subdivision a of subsection 2 of section 65-05-08.1, section 65-05-09.2, and subsection 2 of section 65-05-25 of the North Dakota Century Code, relating to workers' compensation benefits and procedures; to provide for a legislative council study; and to repeal section 65-02-16 of the North Dakota Century Code, relating to removal of a workers' compensation binding arbitration panel member.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 2 of subdivision b of subsection 8 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

(2) Any injury caused by the use of ~~narcotics or~~ intoxicants or the illegal use of controlled substances.

SECTION 2. A new subsection to section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

"Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.

SECTION 3. AMENDMENT. Subsection 30 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30. "~~Gross~~ Average weekly wage" means the weekly wages the employee was receiving from all employments at the time of injury. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined ~~in the following manner~~ by using the first applicable formula from the schedule below:

a. The "average weekly wage" of a self-employed employee is determined by the following formula: net profits based on preceding tax year or preceding fifty-two weeks whichever is higher, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.

b. Hourly or daily rate multiplied by number of hours or days worked per seven day week;

~~b.~~ c. Monthly rate multiplied by twelve months and divided by fifty-two weeks;

~~c.~~ d. Biweekly rate divided by two;

~~d.~~ e. If the average weekly ~~earnings~~ wage of an employee cannot be ascertained, the wage for the purposes of calculating compensation must be taken to be the usual wage paid other employees engaged in like or similar occupations where the wages are fixed; or

~~e.~~ f. If there are special circumstances under which the average weekly wages cannot be reasonably and fairly determined by applying subdivisions a through ~~d~~ e, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked, whichever is less.

SECTION 4. AMENDMENT. Section 65-01-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **65-01-11. Burden of proof in compensation matters - Death certificate.** If the bureau or an employer claims that an employee is not entitled to the benefits of the North Dakota Workers' Compensation Law by reason of the fact that the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary ~~intoxication of~~ impairment caused by use of alcohol or illegal use of a controlled substance by the employee, the burden of proving such exemption or forfeiture is upon the bureau or upon the person alleging the same; however, a blood alcohol concentration level at or above the ~~legal intoxication~~ limit ~~as defined in subsection 3 of section 39-20-07~~ set by the United States secretary of transportation in 49 CFR 383.52 or a level of an illegally used controlled substance sufficient to cause impairment found by a test required by a physician, qualified technician, chemist, or registered nurse and performed as required by the United States secretary of transportation under 49 CFR part 40, at or above the cutoff level in part 40, creates a rebuttable presumption that the injury was due to ~~intoxication~~ impairment caused by the use of alcohol or the illegal use of a controlled substance. An employer or a doctor who has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance may request that the employee undergo testing to determine if the employee had alcohol or the controlled substance in the employee's system at levels greater than the limit set by the United States department of transportation at the time of the injury. If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury. Any claimant against the fund, however, has the burden of proving by a preponderance of the evidence that the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate must be considered as evidence of death and may not be used to establish the cause of death. If the employee can prove by a preponderance of the evidence, within one year of a denial

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[1] NOTE: Section 65-01-11 was also amended by section 8 of House Bill No. 1098, chapter 387.

based upon impairment caused by the use of alcohol or the illegal use of a controlled substance, that the employee has successfully completed treatment with a licensed addiction facility, the employee's benefits must be reinstated. Costs for treatment under this section may not be paid by the bureau.

SECTION 5. AMENDMENT. Section 65-02-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-15. Workers' compensation binding arbitration ~~panel - Membership~~ - Qualified arbitrator - Regions. ~~The bureau shall establish four regional listings of persons who may serve as arbitrators for workers' compensation proceedings. Each regional listing must contain an equal number of names submitted to the director by an organization, statewide in scope, which, through its affiliates, embraces a cross section and a majority of the organized labor of the state; an equal number of names submitted to the director by a recognized statewide organization of employers, representing a majority of employers; and a similarly equal number of names selected by the bureau from applications by interested persons throughout the state who demonstrate the unique ability, experience, and qualifications to serve as arbitrators. Each list must be revised every three years. The people whose names appear on a regional listing must reside in that region. When a disputed claim is submitted for binding arbitration, the employee shall select a name from the appropriate regional list that was submitted by the labor organization; the employer shall select a name from the appropriate regional list that was submitted by the statewide organization of employers or shall designate the bureau to do so; and the selected employee and employer representatives shall select a name from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability.~~ The bureau shall divide the state into four regions for the purpose of holding arbitration proceedings. The appropriate region is the region in which the employee resides. If the employee resides out of state, the appropriate region is the region of the situs of employment. ~~As an alternative selection procedure, by mutual agreement, the employee and the employer may designate themselves as the employee and employer representatives on the panel and together shall select the third panel member from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability. Panel members are entitled to remuneration for their services at a rate set by the bureau and to travel expenses at the rate in effect for state employees.~~ The bureau shall provide staff services to the panel members. The salaries and expenses of the panel must be paid from money appropriated to the bureau for that purpose. The process for choosing arbitrators and qualifications for arbitrators must be outlined by rule. The employee can request and the bureau may allow a change of arbitrator upon a showing of just cause.

SECTION 6. AMENDMENT. Section 65-02-17 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-17. Binding arbitration ~~panel - Attorneys' fees~~. Following ~~constructive denial of a claim or~~ issuance of an administrative order under chapter 28-32 reducing or denying benefits, an aggrieved employee or employer may request that the action be submitted to binding arbitration ~~before the workers' compensation binding arbitration panel~~ in lieu of a formal administrative hearing or judicial remedy. ~~The bureau shall pay, at an hourly rate established by the bureau, a claimant's attorneys' fees on claims submitted for binding arbitration. If the aggrieved employee elects not to submit the action to binding arbitration,~~

~~attorneys' fees may only be paid if the employee prevails~~ Binding arbitration is permitted only with the consent of the nonrequesting party.

SECTION 7. AMENDMENT. Section 65-02-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-18. Administrative orders - ~~Decisions of binding arbitration panel~~ Binding arbitration decisions - Appeals. An appeal of an administrative order is subject to section 28-32-14. A decision ~~of the workers' compensation~~ resulting from binding arbitration ~~panel~~ is final and nonreviewable by ~~a district~~ any court, except as provided in section 65-05-04.

SECTION 8. AMENDMENT. Section 65-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Premium receipts and certificates to be mailed. Each employer subject to this title shall pay into the fund annually the amount of premiums determined and fixed by the bureau for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the bureau and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of this title. ~~A~~ Immediately after payment is made, the bureau shall mail to the employer a receipt or certificate specifying that the payment has been made ~~must be mailed to the employer by the bureau immediately after the payment is made, and the~~. The receipt or certificate, attested by the seal of the bureau, is prima facie evidence of the payment of the premium. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of that entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates. For the purpose of effectuating different or specified due dates the bureau may carry new or current risks for a period of less than one year and not to exceed fifteen months, either by request of the employer or action of the bureau. An employer subject to this chapter shall display in a conspicuous manner at the workplace and in a sufficient number of places to reasonably inform employees of the fact, a certificate of premium payment showing compliance with this chapter and the toll-free telephone number used to report unsafe working conditions and actual or suspected workers' compensation fraud. Any employer subject to this chapter is liable to pay a civil penalty of two hundred fifty dollars for failure to display the notice of compliance and the toll-free telephone number as required by this section.

[2] **SECTION 9. AMENDMENT.** Subdivision a of subsection 2 of section 65-05-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;

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[2] NOTE: Section 65-05-08.1 was also amended by section 1 of House Bill No. 1136, chapter 627.

SECTION 10. AMENDMENT. Section 65-05-09.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09.2. Retirement offset. If ~~a claimant~~ an employee is entitled to permanent total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's social security retirement offset must equal forty percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability under section 65-05-09, to the current state's average weekly wage. Any offset calculated cannot exceed forty percent of the employee's weekly social security retirement benefit. If a claim has been accepted on an aggravation basis and the ~~worker~~ employee is eligible for social security benefits, the bureau's offset must be proportionally calculated. An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. ~~The provisions of this section are effective for workers who retire on or after July 1, 1989~~ This section applies to an employee who becomes entitled to and receives social security retirement benefits after June 30, 1989, or who receives social security retirement benefits that have been converted from social security disability benefits by the social security administration after June 30, 1989. A conversion by the bureau from offsetting an employee's social security disability benefits to offsetting an employee's social security retirement benefits under this section may not result in a decrease in the aggregate amount of benefits the employee receives from both sources.

SECTION 11. AMENDMENT. Subsection 2 of section 65-05-25 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The bureau and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the bureau may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, the concept of reopening a disability claim due to significant change in medical condition is ~~applicable~~ inapplicable.

SECTION 12. LEGISLATIVE COUNCIL STUDY. During the 1993-94 interim, the legislative council shall study the feasibility and desirability of replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system and of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings and shall study the impact of consortium awards on third-party subrogation settlements and cases. The workers compensation bureau shall develop rules and procedures to implement a permanent partial disability system and present those rules and procedures to the legislative council or a designated committee for review as part of the interim study.

SECTION 13. REPEAL. Section 65-02-16 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved April 29, 1993
Filed April 30, 1993

CHAPTER 615

SENATE BILL NO. 2396
(Senators O'Connell, Holmberg, Tallackson)
(Representatives Dobrinski, Grosz, Martin)

WORKERS' COMPENSATION DEFINITIONS

AN ACT to amend and reenact subsections 14 and 15 of section 65-01-02 of the North Dakota Century Code, relating to the definitions of employee and employer for purposes of workers' compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[1] **SECTION 1. AMENDMENT.** Subsections 14 and 15 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

14. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

    a. The term includes:

        (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.

        (2) Aliens.

        (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.

        (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor worker, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.

    b. The term does not include:

        (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.

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[1] NOTE: Subsection 15 of section 65-01-02 was also amended by section 105 of Senate Bill No. 2223, chapter 54.

(2) Any person who is engaged in an illegal enterprise or occupation.

(3) The spouse or child of the employer dwelling in the household of the employer.

(4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:

(a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.

(b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.

(c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.

(5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.

c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.

15. "Employer" means:

a. The state and all political subdivisions thereof.

b. All public and quasi-public corporations in this state.

c. Every person, partnership, association, and private corporation, including a public service corporation.

d. The legal representative of any deceased employer.

e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.

f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.

g. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

Approved March 30, 1993
Filed April 1, 1993

CHAPTER 616

HOUSE BILL NO. 1310
(Representatives Porter, Gorman, Hanson, Kelsch)
(Senator Krebsbach)

NEWS DELIVERY UNDER WORKERS' COMPENSATION

AN ACT to create and enact a new paragraph to subdivision b of subsection 14 of section 65-01-02 of the North Dakota Century Code, relating to exclusion of newspaper definition of employee for purposes of workers' compensation coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new paragraph to subdivision b of subsection 14 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 617

HOUSE BILL NO. 1262
(Representative Dorso)
(Senator Krebsbach)

WORKERS' COMPENSATION WAGES DEFINED

AN ACT to amend and reenact subsection 29 of section 65-01-02 of the North Dakota Century Code, relating to the definition of wages for workers' compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 29 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29. "Wages" means ~~all~~ an employee's remuneration ~~payable in money or a substitute for money for services rendered by an employee.~~

~~a. The term includes:~~

~~(1) The actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent, or housing and per diem is lost as a result of the injury.~~

~~(2) Commissions and bonuses.~~

~~(3) Extra wages for any and all overtime work.~~

~~(4) Wages or salary paid during holidays, vacations, or sickness periods.~~

~~(5) Gratuities received in the course of employment, from others than the employer, only when such gratuities are received with the knowledge of the employer and reported to the internal revenue service.~~

~~(6) Wages earned from employment at more than one occupation or employer other than the employer at the time of injury, if those wages are lost due to compensable injury.~~

~~(7) Unemployment insurance benefits and workers' compensation temporary total disability benefits paid to the injured employee during the twelve months preceding the month of injury will be taken into account when computing the average weekly gross earnings in cases where there are special circumstances under which the average gross weekly earnings cannot be determined.~~

~~b. The term "wages" does not include:~~

~~(1) Severance pay.~~

~~(2) The cash value of health, medical, life, or other insurance benefits or retirement benefits.~~

~~(3) Social security benefits.~~

~~(4) Passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts~~ from all employment reportable by employers to the internal revenue service as earned income for federal income tax purposes and lost as the result of a compensable work injury.

Approved April 2, 1993
Filed April 2, 1993

CHAPTER 618

HOUSE BILL NO. 1165
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION INFORMAL DECISIONS

AN ACT to amend and reenact subsections 4 and 7 of section 65-01-14 of the North Dakota Century Code, relating to workers' compensation informal decisions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 7 of section 65-01-14 of the 1991 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The bureau shall make its informal decision on the claim after filing of the claim and the physician's certificate. The bureau shall issue a notice of decision, including a short summary indicating the reason for decision, and shall serve the notice on the parties by mailing a copy to ~~them~~ the parties by regular mail. The bureau is not required to make findings of fact and conclusions of law when it makes an informal decision. Any party may, within thirty days of the date of mailing of notice of initial award, request reconsideration by filing a written request for reconsideration. The request may be accompanied by affidavits, medical records, or other evidence not previously submitted to the bureau. No later than ~~ninety~~ sixty days following filing of a request for reconsideration, the bureau shall issue an order conforming to the requirements of chapter 28-32. Following issuance of an order, any party may request rehearing or file an appeal in accordance with chapter 28-32. If a timely request for reconsideration is not filed, the decision of the bureau is final, subject only to reopening of the claim under section 65-05-04. The provisions of section 65-10-01, relating to appeals from decision of the bureau, apply only when the bureau issues an order following a timely request for reconsideration.

7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award ~~or a~~, vocational award, or when it terminates or denies disability or vocational services~~, or has otherwise been requested to issue an administrative order by an aggrieved party by filing a request for reconsideration of its informal decision~~. The bureau shall issue an informal decision on an initial determination of disability benefits.

SECTION 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 619

HOUSE BILL NO. 1163
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION RULES AND ATTORNEYS' FEES

AN ACT to amend and reenact section 65-02-08 of the North Dakota Century Code, relating to workers compensation bureau rulemaking power and payment of attorneys' fees; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall adopt such rules, not inconsistent with this title, as may be necessary to carry out this title. All fees on claims for legal, medical, and hospital services rendered under this title to any claimant must be in accordance with schedules of fees adopted or to be adopted by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, ~~an~~ a reasonable maximum hourly rate and a maximum fee to compensate claimants' attorneys for legal services following constructive denial of a claim, notice of informal decision, or issuance of an administrative order under chapter 28-32 reducing or denying benefits. "Constructive denial" means ~~delay in payment,~~ failure to issue an administrative order~~, or failure to act~~ within ~~ninety~~ sixty days of the date when all elements of initial filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. Satisfaction of elements of filing must be defined by administrative rule. All attorneys' fees and costs must be paid from the bureau general fund. The bureau shall pay attorneys' fees as follows:

1. The employee has prevailed in binding dispute resolution under section 65-02-20;

2. The dispute is referred to binding arbitration under section 65-02-17;

3. The employee has prevailed after reconsideration of an informal decision under section 65-01-14;

4. The employee has prevailed after an administrative hearing under chapter 28-32;

5. If there has been constructive denial of a claim, the bureau shall only pay attorneys' fees from the occurrence of the constructive denial until the bureau issues a notice of informal decision or administrative order; or

6. As otherwise provided by administrative rule.

The bureau shall adopt administrative rules for the payment of an employee's attorney's fees when an employee's request for binding arbitration is rejected by the employer. Nothing provided herein may be construed to prevent a claimant or employer from hiring or paying his or her own attorney; however, the claimant's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. All disputes relating to payment or denial of attorneys' fees must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney, one member selected by the bureau, and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.

SECTION 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 620

SENATE BILL NO. 2040
(Legislative Council)
(Interim Industry, Business and Labor Committee)

WORKERS' COMPENSATION SERVICES, CLAIMS, AND RECORDS

AN ACT to amend and reenact sections 65-02-19, 65-02-21, 65-05-01, and 65-05-32 of the North Dakota Century Code, relating to contracts for administrative and managed care services, to the time limit for filing a claim for workers' compensation, and to privacy of records and hearings concerning workers' compensation matters; to provide for application of this Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-19 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-19. Bureau to contract for administrative services. The bureau shall contract for the services of a third-party administrator to monitor medical treatments of injured employees and to monitor the payment of medical expenses of all workers' compensation claims. The bureau shall solicit bids for administrative services ~~within four months after July 1, 1991,~~ and ~~by December 1, 1991,~~ shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The ~~initial~~ contract ~~must begin January 1, 1992, and continue through June 30, 1993. Subsequent contracts~~ must be for the period of a biennium. ~~Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.~~ The bureau may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury. The bureau shall rebid the contract for the biennium beginning July 1, 1995, and shall rebid subsequent contracts at least every four years.

SECTION 2. AMENDMENT. Section 65-02-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-21. Contract for administration of managed care program. The bureau shall contract for the services of a third-party administrator to implement the managed care program. The bureau shall solicit bids for these administrative services ~~within four months after July 1, 1991~~. The solicitation must include a description of the program and the services expected of the managed care administrator. ~~By December 1, 1991, the~~ The bureau shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The ~~initial~~ contract ~~must begin January 1, 1992, and continue through June 30, 1993. Subsequent contracts~~ must be for the period of a biennium. ~~Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.~~ The bureau may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of an employee who suffers a compensable injury. The bureau

shall rebid the contract for the biennium beginning July 1, 1995, and shall rebid subsequent contracts at least every four years.

SECTION 3. AMENDMENT. Section 65-05-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-01. Claims for compensation - When and where filed. All original claims for compensation must be filed by the injured ~~worker~~ employee, or someone on the injured ~~worker's~~ employee's behalf, within one year after the injury or within two years after the death. The date of injury for purposes of this section ~~must be~~ is the actual date of injury when ~~such~~ that date can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty, the date of injury ~~must be~~ is the first date that a reasonable person knew or should have known that the ~~injury was related to employment~~ employee suffered a compensable injury and the employee was informed by the employee's treating health care provider that the employee's work activities are a substantial contributing factor in the development of the employee's injury or condition. No compensation or benefits may be allowed under ~~the provisions of~~ this title to any person, except as provided in section 65-05-04, unless ~~he or she~~ that person, or someone on ~~his or her~~ that person's behalf, files a written claim ~~therefor~~ for compensation or benefits within the time specified in this section. ~~Such~~ A claim must be filed by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation may designate; or

2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate.

SECTION 4. AMENDMENT. Section 65-05-32 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-32. Privacy of records and hearings. Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the bureau.

2. Employers or their duly authorized representatives may review and have access to any files of their own injured workers.

3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.

4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.

5. The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.

6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

SECTION 5. APPLICATION OF ACT. Section 4 of this Act applies to all claims irrespective of the date information is requested.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1993
Filed April 30, 1993

CHAPTER 621

HOUSE BILL NO. 1138
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION BUREAU MANAGED CARE PROGRAM

AN ACT to amend and reenact section 65-02-20 of the North Dakota Century Code, relating to the workers compensation bureau managed care program; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-20. Bureau to establish managed care program. The bureau shall establish a managed care program with a third-party administrator to effect the best medical solution for an injured employee. The managed care system must allow for a third-party administrator to direct the program for medical care of the injured employee upon a finding by the bureau that the employee suffered a compensable injury. The managed care administrator shall operate according to guidelines adopted by the bureau to ensure that an injured employee receives appropriate medical treatment in a cost-effective manner. The managed care administrator shall assist the bureau in the medical management of claims within the bounds of workers' compensation law. If an employee, employer, or medical provider disputes the recommendation of the managed care administrator, the employee, employer, or medical provider may request binding dispute resolution on the recommendation. The bureau shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-14 or 65-02-17. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion by the dispute resolution panel. Any person providing binding dispute resolution services under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

SECTION 2. APPLICATION OF ACT. This Act applies to all managed care recommendations that occur after the adoption of administrative rules providing for the procedures for dispute resolution. Final administrative rules must be adopted by January 1, 1994.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 622

SENATE BILL NO. 2199
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUMS AND EXPERIENCE RATING

AN ACT to amend and reenact sections 65-04-04.2, 65-04-17, and 65-07-03 of the North Dakota Century Code, relating to determination of weekly wage for workers compensation premium purposes, reporting of employer premiums, and calculation of the experience rating for employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-04.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-04.2. Basis of calculating premiums.

1. For each year, the amount of an employee's wages subject to premium calculations must be determined as an amount equal to seventy percent of the statewide average annual wage, hereafter referred to as limited payroll, rounded to the nearest one hundred dollars, determined by the bureau on or before July first as calculated by job service North Dakota under subsection 3 of section 52-04-03.

2. The rates for each classification must be determined by:

   a. Estimating the revenue needed by each employment classification;

   b. Estimating the total limited payroll to be reported by all employers in each employment classification for the year;

   c. Dividing the estimated revenue needed by an employment classification by the estimated total limited payroll in that classification to determine the required average premium for that classification rate; and

   ~~d. Determining the maximum and minimum rates for each employment classification by:~~

      ~~(1) Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and~~

      ~~(2) Multiplying the required average premium rate by twenty five hundredths to get the minimum rate assigned to an employer with a positive experience rating.~~

SECTION 2. AMENDMENT. Section 65-04-17 of the North Dakota Century Code is amended and reenacted as follows:

65-04-17. Experience rating of employers. The bureau may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the bureau may establish from time to time.

In calculating the experience rating, the bureau shall determine the maximum and minimum rates for each employment classification by:

1. Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and

2. Multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

SECTION 3. AMENDMENT. Section 65-07-03 of the North Dakota Century Code is amended and reenacted as follows:

65-07-03. Determination of "weekly wage" for premium purposes. If the bureau enters into a contract for insurance under this chapter, the premium for such protection shall be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as ~~determined by said person~~ outlined in subdivision a of subsection 31 of section 65-01-02. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.

2. A reasonable wage as determined by the bureau for said employees in the same class of industry that the volunteer organization is engaged.

Approved March 31, 1993
Filed April 1, 1993

CHAPTER 623

HOUSE BILL NO. 1141
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUM RATES

AN ACT to repeal section 32 of chapter 714 of the 1991 Session Laws of North Dakota, relating to workers' compensation premium rate changes and payments; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 32 of chapter 714 of the 1991 Session Laws of North Dakota is repealed.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1993.

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

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 624

HOUSE BILL NO. 1367
(Representatives Dorso, Hokana)
(Senators Langley, Mutch)

WORKERS' COMPENSATION RISK MANAGEMENT

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to a workers' compensation premium for a risk management program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Premium discount for implementation of preapproved risk management program. Any employer who implements or maintains risk management programs approved by the bureau is entitled to a five percent discount in the annual premium the employer must pay to the bureau for the year following the year in which the risk management programs are implemented or maintained. The bureau may not apply the discount to an employer's premium unless the bureau has approved the programs implemented by the employer.

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

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 625

HOUSE BILL NO. 1140
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUMS LIENS

AN ACT to amend and reenact section 65-04-26 of the North Dakota Century Code, relating to workers' compensation delinquent premium lien priority and filing; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-26 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26. Lien priority and filing - Remedies available in action for delinquent premiums - Exemptions restricted. The claim of the bureau in bankruptcy, probate, insolvency, and receivership proceedings for premiums in default and penalties shall be a lien with the same priority as prior income tax liens, except that this lien shall not be enforceable against a purchaser (including a lien creditor) of real estate or personal property for valuable consideration without notice. Notice of this lien shall be filed in the place and manner provided for in section 57-38-49. A certificate of the bureau that premiums and penalties are due for the period stated in the certificate is prima facie evidence of this fact. In any action brought for the recovery of premiums in default and penalties, the remedies of garnishment or attachment, or both, shall be available. No exemptions except absolute exemptions under section 28-22-02 shall be allowed against any levy under execution pursuant to judgment recovered in ~~such~~ the action.

SECTION 2. EFFECTIVE DATE. This Act becomes effective for any levy under execution issued after August 1, 1993, irrespective of the date of judgment.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 626

HOUSE BILL NO. 1164
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION OTHER STATE BENEFITS

AN ACT to amend and reenact section 65-05-05 of the North Dakota Century Code, relating to workers' compensation payments to insured employees injured in the course of employment and to their dependents; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-05 of the North Dakota Century Code is amended and reenacted as follows:

65-05-05. Payments made to insured employees injured in course of employment and to their dependents. The bureau shall disburse the fund for the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

1. Are subject to the provisions of this title;
2. Are employed by employers who are subject to this title; and
3. Have been injured in the course of their employment.

~~Where compensation is received~~ If an employee applies for benefits from another state for the same injury, the bureau will suspend all future benefits pending resolution of the application. If an employee is determined to be eligible for benefits through some other state act, no further compensation shall be allowed under this title ~~unless such benefits are awarded by another state as a supplement to this state's benefits~~ and the employee must reimburse the bureau for the entire amount of benefits paid if the award covers the same time period already reimbursed by the bureau.

SECTION 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 627

HOUSE BILL NO. 1136
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

TEMPORARY TOTAL DISABILITY VERIFICATION

AN ACT to amend and reenact section 65-05-08.1 of the North Dakota Century Code, relating to workers' compensation verification of temporary total disability; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-08.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **65-05-08.1. Verification of temporary total disability.**

1. The claimant's doctor shall certify the period of temporary total disability upon request of the bureau.
2. A doctor certifying disability shall include in the report filed with the bureau:
   a. The medical basis for the certification of disability;
   b. Whether the employee is totally disabled, from any and all employment, or whether the employee is able to return to some employment, including light work or sedentary work;
   c. If the employee is not totally disabled, a statement of the employee's restrictions and physical limitations; and
   d. A professional opinion as to the expected length of, and reason for, the disability.
   e. A doctor may not certify or verify past disability unless the doctor has examined the employee within the previous sixty days and filed those reports required by this title.
3. The report must be filed on a form furnished by the bureau, or on any other form acceptable to the bureau.
4. The claimant shall ensure that the required reports are filed.
5. Prior to expiration of a period of temporary total disability certified by a doctor, if a report certifying an additional period of disability has

[1] NOTE: Section 65-05-08.1 was also amended by section 9 of Senate Bill No. 2200, chapter 614.

not been filed, the bureau shall send a notice to the claimant of intention to discontinue benefits, the reason therefor, and an explanation of the right to respond and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the claimant's doctor. Thereafter, if the required certification is not filed, the bureau shall discontinue temporary total disability benefits by formal order, effective no sooner than twenty-one days after the date of notice of intention to discontinue benefits is mailed.

6. Upon receipt of a report or other evidence indicating a claimant who is receiving temporary total disability benefits has been or will be released to return to work, the bureau shall issue and mail to the claimant a notice of intention to discontinue benefits. Such benefits may thereafter be discontinued on the date of release to return to work or twenty-one days following mailing of the notice, whichever is later. The notice must include a statement of the reason for the action, a brief summary of the evidence relied upon by the bureau, and an explanation of the right to respond and the procedure for challenging the action and submitting additional evidence to the bureau.

SECTION 2. EFFECTIVE DATE. This Act is effective on August 1, 1993, for all claims irrespective of injury date.

Approved April 30, 1993
Filed May 3, 1993

CHAPTER 628

HOUSE BILL NO. 1335
(Representative Ness)

WORKERS' COMPENSATION SOCIAL SECURITY OFFSET

AN ACT to amend and reenact section 65-05-09.1 of the North Dakota Century Code, relating to social security offset against workers' compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-09.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09.1. Social security offset. When an injured employee, or spouse or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 must be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The federal benefit, or primary insurance amount, must be determined by the social security administration. The amount to be offset must equal the primary insurance amount rounded to the next lowest dollar less credit for either the entire amount of attorneys' fees and costs, or the fees and costs paid to an authorized representative of the employee as allowed by the social security administration, withheld from past due social security benefits or paid directly by the claimant for representation before the social security administration. The amount of the offset computed by the bureau initially must remain the same throughout the period of eligibility and may not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, is not eligible for any escalation of benefits which would adversely affect the bureau's right to offset workers' compensation benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a]. Providing further that:

1. If the receipt of social security benefits results in an overpayment of temporary or permanent total disability benefits by the bureau, a refund of any overpayment must be made by the injured worker or that overpayment must be taken from future temporary total or permanent total disability benefits or permanent partial impairment awards, on the current claim or any future claim filed, at a recovery rate to be determined by the bureau.

2. If a claim has been accepted on an aggravation basis and the injured worker is eligible for social security benefits, the bureau's offset must be proportionally calculated.

3. If any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under the Social Security Act, the bureau's estimate of the amount is deemed to be correct until the actual amount is established and no adjustment may be made for any period of time covered by the refusal.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 629

HOUSE BILL NO. 1139
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION REHABILITATION BIDS

AN ACT to amend and reenact section 65-05.1-06.2 of the North Dakota Century Code, relating to workers' compensation rehabilitation services bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.1-06.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.2. Bids for vocational rehabilitation services. The bureau shall solicit bids from vocational rehabilitation vendors to provide services relative to vocational rehabilitation of claimants. The bureau shall contract with the lowest and best bidders to provide these services on ~~an annual~~ a biennial basis. The bureau shall determine the criteria that render a vocational rehabilitation vendor qualified. The request for bids must contain a detailed outline of services each vendor will be expected to provide. The accepted bid is binding upon both the bureau and the rehabilitation vendor. If additional services are determined to be necessary as a result of failed or inappropriate rehabilitation of an injured employee through no fault of the employee, the bureau may contract with the vendor for additional services. If the failure or inappropriateness of the rehabilitation of the injured employee is due to the vendor's failure to provide the necessary services to fulfill the contract, the bureau is not obligated to use that vendor for additional services on that claim and the bureau may refuse payment for a service that the vendor failed to perform which was a material requirement of the contract.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 630

HOUSE BILL NO. 1278
(Representatives Dorso, Mahoney, Wald)

OTHER STATES' BENEFITS

AN ACT to amend and reenact subsection 4 of section 65-08-01 of the North Dakota Century Code, relating to payment of workers' compensation benefits in another state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 65-08-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. An employer whose employment results in significant contacts with this state shall acquire workers' compensation coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation law of the other state. An employment has significant contacts with this state when (a) the employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or (b) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. ~~Benefits paid under the other state's workers' compensation law, however, bar benefits in this state, unless benefits pursuant to the other state's act are paid only to supplement benefits under this title.~~ A claim filed under this subsection is subject to section 65-05-05. The time limits within which the bureau shall issue a decision on a claim, as specified in sections 65-01-14 and 65-02-08, do not begin to run for claims filed under this section until the first date the bureau may begin to process the claim as set forth in section 65-05-05.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 631

HOUSE BILL NO. 1222
(Representatives Wald, Dorso, Mahoney)
(Senators Dotzenrod, Maxson, Tallackson)

WORKERS' COMPENSATION EXTRATERRITORIAL COVERAGE

AN ACT to create a North Dakota workers' compensation insurance company; to amend and reenact section 54-17-07 of the North Dakota Century Code, relating to the duties of the industrial commission; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 through 6 of this Act, unless the context otherwise requires:

1. "Company" means the workers' compensation insurance company or other organization established by the bureau to provide additional workers' compensation coverage.

2. "Employers' liability coverage" means an insurance product that provides coverage for injury-related claims suffered by an employee that are not covered by title 65.

3. "Extraterritorial workers' compensation coverage" means coverage provided under section 65-08-01.

4. "Incidental operations" means operations of an employer for fewer than thirty days in a state with which the employer has no other significant contacts.

5. "Other states insurance" means an insurance product that provides workers' compensation insurance coverage to an employer for that employer's employee while the employee is working at an incidental operation in a state in which the employee is eligible to file for workers' compensation benefits if the employee suffers a work-related illness or injury or dies as a result of work activities in that state.

6. "Principally localized" means the employer has a place of business in this state, the employee regularly works at or from that place of business, the employment contract is entered in that state, and in case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer.

SECTION 2. Workers' compensation additional coverages. The bureau may establish a casualty insurance organization, organized as a stock or mutual company, a risk pool, a reciprocal exchange, a risk retention or purchasing group, or a reinsurer with the limited purpose of offering extraterritorial workers' compensation insurance coverage or other states' insurance. The casualty insurance organization may be established only upon the director's determination that the organization is needed to provide sufficient workers' compensation coverage for the

employees and employers of this state and upon the approval of the budget section of the legislative council. If a stock insurance company is established, the company shall meet the stock requirements of section 3 of this Act.

SECTION 3. Workers' compensation insurance company created - Stock requirements. The North Dakota workers compensation bureau may establish a stock insurance company to provide extraterritorial workers' compensation insurance, other states' insurance, and employer's liability insurance to North Dakota employers insured by the bureau. The capital stock and surplus for the company must be paid out of the workers' compensation fund. The company shall have capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. The company may not issue an insurance policy until fifty percent of the required capital stock and all of the required surplus have been paid in, and the residue of capital stock must be paid in within twelve months from the time of filing the articles of incorporation. The bureau is the sole stockholder of the company. The company must be incorporated pursuant to the laws of this state and is subject to title 26.1 unless otherwise provided.

SECTION 4. Board of directors - Members. The board of directors of the company consists of the director of the workers compensation bureau and four persons appointed by the director. The director is the chairman of the board. The chairman shall appoint a secretary-treasurer for the board. Any member of the board may be removed at any time by the director.

SECTION 5. Workers' compensation insurance to be provided. The company shall provide extraterritorial workers' compensation insurance or other states' insurance to an employer who is insured by the North Dakota workers compensation bureau. The company may exclude coverage for a state with which the workers compensation bureau has a reciprocal agreement that recognizes an employer's workers' compensation coverage in the state in which the employer's business is principally localized as being sufficient or for a state whose workers' compensation coverage is provided through an exclusive state fund.

SECTION 6. Rates - Billing. The board shall set the rates to be charged by the company for additional workers' compensation coverage. The board may consult with the workers compensation bureau and its actuary in determining the appropriate rates. The company shall incorporate its billings with the billings of the bureau to ensure that an employer receives one billing that itemizes the charges for mandatory workers' compensation coverage and for the optional additional workers' compensation insurance.

SECTION 7. AMENDMENT. Section 54-17-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17-07. Industries under the industrial commission - Income on deposits and investments. The industrial commission shall operate, manage, control, and govern all utilities, industries, enterprises, and business projects established, owned, undertaken, administered, or operated by the state of North Dakota, except those carried on in penal, charitable, or educational institutions or those conducted pursuant to sections 1 through 6 of this Act. All income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission must be added to and become a part of such moneys.

SECTION 8. EFFECTIVE DATE. This Act becomes effective on January 1, 1994.

Approved April 21, 1993
Filed April 22, 1993

VETOED MEASURES

CHAPTER 632

SENATE BILL NO. 2055
(Senator Evanson)

STUDENT INFORMATION CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 15-38 of the North Dakota Century Code, relating to confidentiality of student information.

VETO

March 16, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2055

Dear President Myrdal,

I am returning Senate Bill 2055 pursuant to Article V Section 9 of the North Dakota Constitution, exercising my authority to veto the bill under North Dakota Law.

The bill was designed to alleviate apparent problems in our school systems, whereby a school counselor, or social worker, who is subject to confidentiality rules is unable to disclose information to the teacher about a particular student. The legislation purports to alleviate that problem by cloaking the teacher with similar confidentiality rules. I have several concerns and objections to the bill which follow:

1. The bill does not achieve its intended result. In other words, Senate Bill 2055 does not change the confidentiality rules that another person (a school counselor/social worker) is subject to, nor does it authorize another person to disclose confidential information to the teacher.

2. I believe the bill is a step in the wrong direction for our educational system. Specifically, I believe teachers should be allowed greater latitude with respect to the manner in which they deal with our children and the students of our state. This bill impedes the flexibility I believe teachers should have in performing their duties.

3. Confidentiality rules, if necessary, can be formulated administratively in the North Dakota Educators Code of Ethics.

4. The general rule of confidentiality has four fairly broad exemptions that raise concerns not addressed by the bill. For example, if the teacher incorrectly determines that one of the exceptions applies, then is the

teacher subject to fines, disciplinary action, or even civil liability to the student?

For these reasons, I veto Senate Bill 2055, and respectfully return it to the Senate.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-38 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of student information. No teacher may disclose to any other person confidential information received from or about a student except as provided in this section. Information is considered confidential if made privately and not intended for disclosure to any other person. A teacher may disclose information when:

1. The teacher has reason to believe that there is danger or detriment to the health, safety, or life of a person and that disclosure of the information will alleviate the danger;

2. The student's parent if the student is under eighteen, or the student if the student is eighteen or older waives the confidentiality requirement of this section;

3. Such information needs to be shared with parents, other teachers, counselors, or school personnel in the normal course of educating the student; or

4. Disclosure is required by other provisions of law.

Disapproved March 16, 1993
Filed March 23, 1993

CHAPTER 633

HOUSE BILL NO. 1276
(Representatives Dorso, Nelson, Rydell)
(Senators Heinrich, Nalewaja, W. Stenehjem)

DEVELOPMENTALLY DISABLED FACILITY DEPRECIATION RECAPTURE

AN ACT to create and enact a new section to chapter 25-16 of the North Dakota Century Code, relating to residential care and services for the developmentally disabled.

VETO

March 23, 1993

The Honorable Rick Berg
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1276

Dear Speaker Berg,

I am returning House Bill No. 1276, and hereby veto the same.

Under current law, North Dakota recaptures depreciation when a care provider of the developmentally disabled sells a facility or fixed asset. The recapture is limited to the extent that the sale price exceeds the net book value (depreciated value) of the asset. House Bill 1276 seeks to change that procedure dramatically. The bill limits the amount of recapture to the difference between sale price and the outstanding mortgage or debt against the property. This limitation may result in a "churning" of facilities, through the artificial creation of debt, the sale of properties and the loss of recapture to the State of North Dakota. In other words, when North Dakota should have received depreciation recapture - no recapture will be received when the debt meets or exceeds the disposal price.

House Bill 1276 could cost the state substantial revenue if a number of facilities are sold, which could severely disrupt services to the developmentally disabled. Private providers of services to the developmentally disabled have been the backbone of our programs. Those providers deserve fair compensation for their services with appropriate and accurate recognition of depreciation being a proper and integral part of their remuneration.

I believe House Bill 1276 impedes that process and I respectfully return the same.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-16 of the North Dakota Century Code is created and enacted as follows:

Depreciation recapture on sale of fixed assets. When care providers, or operators of institutions or facilities sell fixed assets or otherwise remove the asset from service in or to the facility, any depreciation costs asserted with respect to that asset are subject to depreciation recapture. The depreciation recapture is to the extent that the sale or disposal price exceeds the net book value of the asset. Depreciation recapture applies only during the first fifteen years of operation of the facility or institution or within the first fifteen years after acquisition of a fixed asset. The amount of depreciation recapture may not exceed the difference between the sale price and the outstanding mortgage or debt on the facility.

Disapproved March 23, 1993
Filed March 30, 1993

CHAPTER 634

SENATE BILL NO. 2257
(Senators Mathern, Freborg)
(Representatives Clayburgh, Kerzman)

CHILD ASSISTANCE IN TESTIMONY

AN ACT to create and enact three new sections to chapter 12.1-35 and a new subsection to section 12.1-35-02 of the North Dakota Century Code, relating to testimony and proceedings involving a witness or victim who is a minor; and to amend and reenact sections 12.1-35-01 and 12.1-35-04 of the North Dakota Century Code, relating to victim and witness standards.

VETO

March 23, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2257

Dear President Myrdal,

Attached please find Senate Bill No. 2257, which I hereby veto.

Section 3 of the bill seeks to expand the protections afforded to North Dakota's children under Chapter 12.1-35 during the child's involvement in legal proceedings. Our children rightfully deserve the protection of the courts and the law in such instances. However, the North Dakota courts have the inherent power to protect witnesses, including children from badgering, harassment, or abuse as they testify in court. In addition, North Dakota law also, currently provides protection to witnesses during discovery proceedings. (See for example, Criminal Procedure Rule 15, and Civil Procedure Rule 26(c).)

Section 4 places a mandatory obligation on the court to allow an individual to sit with, accompany, or be in close proximity to the child during the child's testimony. That obligation is mandatory to the court in all cases regardless of the age of the child so long as a request for the assistance is made. I believe the bill goes too far by requiring the court to permit such a procedure in all cases and gives rise to the potential for coaching during testimony. Section 4 of the bill also requires the court to hold a hearing at the request of the state to see if the courtroom should be closed during the child's testimony. The accused has a constitutional right to a speedy and public trial - which, of course, is not absolute. Nonetheless, I am troubled by the constitutional implications and direction that the bill takes with respect to open and public proceedings within our

judicial system. I believe that an open and public judicial system promotes greater understanding and respect for the courts, court personnel, and the law itself.

For these reasons, I respectfully return Senate Bill 2257, having vetoed the same.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-35-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Child" means an individual under the age of eighteen years.

2. "Child development specialist" means an individual who demonstrates educational and work experience exhibiting an understanding of child development and behavior.

~~2.~~ 3. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.

~~3.~~ 4. "Family member" means a spouse, child, sibling, parent, legal guardian, or custodian of a victim.

~~4.~~ 5. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.

~~5.~~ 6. "Sex offense" includes all sex offenses defined as such in chapter 12.1-20.

~~6.~~ 7. "Victim" means a child who has suffered direct or threatened physical, financial, or emotional harm as a result of the commission or attempted commission of a crime.

~~7.~~ 8. "Witness" means any child who has been or is expected to be summoned to testify in a criminal case whether or not any action or proceeding has been commenced.

SECTION 2. A new subsection to section 12.1-35-02 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Information about the availability of a child development specialist to ensure questions asked of the witness are chronologically and developmentally appropriate.

SECTION 3. AMENDMENT. Section 12.1-35-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-35-04. Limits on interviews. The prosecuting attorney and appropriate law enforcement personnel shall, to the extent possible, protect the ~~child~~ victim

Disapproved March 23, 1993
Filed April 2, 1993

CHAPTER 635

SENATE BILL NO. 2446
(Senators DeMers, Graba)
(Representatives C. Carlson, Glassheim, Poolman)

AIRPORT AUTHORITY COMMISSIONER COMPENSATION

AN ACT to amend and reenact section 2-06-06 of the North Dakota Century Code, relating to compensation paid to commissioners of an airport authority.

VETO

March 23, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2446

Dear President Myrdal,

Attached please find Senate Bill No. 2446, which I am returning to the Senate and hereby veto.

The bill seeks to amend Chapter 2-06, the Airport Authorities Act, which has been in place for over three decades, and which establishes the compensation of the Airport Authority Commissioners, who during that period, have graciously served the State of North Dakota and their local authority without compensation, except for necessary expenses, including travel expenses. The bill authorizes a per diem expenditure not to exceed $50 per day, and not to exceed $1,000 annually. Given the number of boards and commissions, I believe the bill is a step in the wrong direction for right-sizing government.

I have therefore vetoed the bill and respectfully return the same to the Senate Chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-06-06 of the North Dakota Century Code is amended and reenacted as follows:

2-06-06. Commissioners - Compensation - Meetings - Officers. A commissioner of an authority may receive ~~no~~ compensation ~~for his services, but~~ not to exceed

fifty dollars for each meeting of the authority attended by the commissioner; however, total compensation received by a commissioner may not exceed one thousand dollars annually. In addition, a commissioner is entitled to ~~the~~ necessary ~~expense~~ expenses, including traveling expenses, incurred in the discharge of ~~his~~ the commissioner's duties. Each commissioner shall hold office until ~~his~~ a successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners must be filed with the authority.

The powers of each authority are vested in the commissioners ~~thereof~~ of the authority. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There must be elected a chairman and vice chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For ~~such~~ any legal services ~~as it~~ an authority may require, an authority may call upon the chief law officer of the municipality or municipalities included in the authority or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

Disapproved March 23, 1993
Filed April 2, 1993

CHAPTER 636

SENATE BILL NO. 2378
(Senators Thane, Robinson, Dotzenrod)
(Representatives Cleary, Stenehjem)

SENTENCING SURCHARGE AND ADMINISTRATION

AN ACT to create and enact a new section to chapter 12.1-32 and two new subsections to section 54-23.3-04 of the North Dakota Century Code, relating to the imposition, collection, allocation, and disbursement of funds generated from a sentencing surcharge and the powers and duties of the director of the department of corrections and rehabilitation; and to provide an appropriation.

VETO

March 25, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2378

Dear President Myrdal,

I am returning Senate Bill No. 2378 and hereby veto the same.

Community correction programs currently exist in Williston, Minot, Jamestown and Richland county, and provide an excellent tool for local authorities as a sentencing option other than jail and also provide a method for repaying court costs, restitution, etc.

Senate Bill 2378, however, establishes regional boards, establishes a special fund up to $508,000, and creates a cumbersome financing mechanism. A local surcharge is collected by misdemeanance at the local level, transferred to the state treasurer, and then returns 85% of the amounts collected to the regional boards and 15% to the Department of Corrections.

I believe the community correction programs are useful vehicles, but that Senate Bill 2378 creates an additional layer of government and is a cumbersome system for maintaining these programs at the local level.

I therefore am respectfully returning Senate Bill 2378, having vetoed the same.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Surcharge on sentencing - Imposition and administration.

1. Any person who pleads guilty or is convicted of any misdemeanor offense in violation of title 12.1 or equivalent ordinances shall pay a sentencing surcharge of twenty-five dollars. The surcharge is in addition to any other sentencing requirement permitted by law.

2. When a person pleads guilty or is convicted of two or more offenses committed as the result of a single act or omission, the court shall impose a sentencing surcharge for only one of the offenses.

3. The offender shall pay the sentencing surcharge to the clerk of court for the court imposing the sentence. The clerk of court shall, on a monthly basis, pay all money collected from the sentencing surcharge to the county treasurer. The county treasurer shall pay, by the fifteenth of each month, all money received from the clerk of court under this section to the state treasurer for deposit in the community corrections development account.

4. If an offender is unable to satisfy the obligation imposed by this section within thirty days, a payment schedule agreeable to the court may be established.

5. The community corrections development account is created in the state treasury. The community corrections development account consists of moneys deposited in the account under this section and interest earned on moneys in the account and may be spent within the limits of legislative appropriations. On the first day of each month the state treasurer shall transfer eighty-five percent of the money in the community corrections development account generated by the sentencing surcharge to the department of corrections and rehabilitation for disbursement to the regional community advisory boards for community corrections programs. The state treasurer shall transfer the remaining balance of the account to the department of corrections and rehabilitation for the administration and development of a community corrections development program.

SECTION 2. Two new subsections to section 54-23.3-04 of the 1991 Supplement to the North Dakota Century Code are created and enacted as follows:

To establish regional community advisory boards for the purpose of improving community and corrections relations through the development of community corrections projects.

To develop a procedure for the access to, distribution of, and use of funds in the community corrections development account by regional community advisory boards.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the community corrections development account in the state treasury, not otherwise appropriated, the sum of $508,012, or so much of the sum as may be necessary, to the

department of corrections and rehabilitation for the purpose of implementing this Act for the biennium beginning July 1, 1993, and ending June 30, 1995.

Salaries and wages	$ 70,000
Operating expenses	6,201
Grants	431,811
Total special fund appropriation	$508,012

Disapproved March 25, 1993
Filed April 2, 1993

CHAPTER 637

SENATE BILL NO. 2398
(Senators B. Stenehjem, Mathern, Jerome)
(Representatives Hanson, Henegar, Torgerson)

MOTORBOAT PROGRAMS AND FUND

AN ACT to create and enact two new sections to chapter 20.1-02 of the North Dakota Century Code, relating to the creation of the motorboat programs and safety fund; to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to motorboat license fees; and to provide an effective date.

VETO

March 25, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2398

Dear President Myrdal,

I am returning Senate Bill No. 2398 to the Senate, having vetoed the same. My reasons for doing so are described below.

First of all, I am concerned that this bill creates a new program in a period of difficult economic times for the state. Secondly, the program is funded through highway tax distribution dollars which would otherwise be used for highway construction. At the present time, North Dakota does not have sufficient funds to fully match the federal highway construction program to date. I don't believe we should divert those funds for new programs such as those contemplated by Senate Bill 2398.

Finally, the bill does not clearly describe the manner in which, and by whom the motor boat programs and safety fund will be administered.

For these reasons, I respectfully return Senate Bill 2398.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Motorboat programs and safety fund - Use. The director shall deposit all motorboat license fees with the state treasurer. The state treasurer shall deposit the fees in the motorboat programs and safety fund. Funds placed in the motorboat programs and safety fund and interest earned on the fund may be used only for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat licensing administration.

SECTION 2. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Motorboat programs and safety fund - Transfer from highway tax distribution fund. On July first of each year the state treasurer shall transfer from the highway tax distribution fund, before allocation of the fund under section 54-27-19, to the motorboat programs and safety fund an amount equal to two dollars and fifty cents multiplied by the number of motorboats licensed with the game and fish department on July first of that year.

SECTION 3. AMENDMENT. Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12. Schedule of fees for licenses and permits. The various license and permit fees shall be as follows:

1. For a resident, age nineteen and over small game hunting license, six dollars, and for a resident, under the age of nineteen small game hunting license, three dollars.
2. For a nonresident small game hunting license, fifty dollars.
3. For a resident big game hunting license, eighteen dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
4. For a nonresident big game hunting license, one hundred dollars, and for a nonresident bow license, one hundred dollars, except as provided in a gubernatorial proclamation issued pursuant to section 20.1-08-04.1.
5. For a resident fur-bearer license, seven dollars.
6. For a resident fishing license, nine dollars, except that for a resident sixty-five years or over or a resident totally or permanently disabled, the license fee shall be three dollars.
7. For a nonresident fishing license, twenty dollars.
8. For a nonresident short-term seven-day fishing license, thirteen dollars.
9. For a resident husband and wife fishing license, thirteen dollars.
10. For a nonresident nongame hunting license, fifteen dollars.
11. For resident and nonresident special permits to hunt deer in certain restricted areas, one dollar.
12. For a wild turkey permit, five dollars.

13. For an annual general game license, three dollars.

14. For a permit to propagate, domesticate, or possess protected wildlife, five dollars.

15. For a license to a nonresident buyer or shipper of green furs, or that person's agent, the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.

16. For a license to a resident buyer or shipper of green furs, eight dollars for each place of business maintained by him within this state.

17. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.

18. For an annual license to practice taxidermy, four dollars.

19. For a permit to ship, by a person having a resident hunting license, during the respective open seasons, not to exceed in any one season twenty-five game birds, to points within this state other than his home or to points outside of this state, three dollars.

20. For a permit to make collections of protected birds and animals for scientific purposes, two dollars.

21. For a permit to ship live protected birds or animals to points either within or outside this state, two dollars per permit. A permit shall be attached to each shipment.

22. For a motorboat certificate of number and license: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, ~~nine~~ twelve dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, ~~twenty-one~~ twenty-four dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, ~~thirty~~ thirty-three dollars. ~~It is the intent of the legislative assembly that the increase in motorboat license fees, as provided by the 1981 and 1989 amendments to this subsection, be used for providing matching funds for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat registration administration.~~

23. To operate watercraft used for hire, the following license fees shall apply for three years:

Class 1. Each craft capable of carrying two adults of average weight, six dollars.

Class 2. Each craft capable of carrying three adults of average weight, six dollars.

Class 3. Each craft capable of carrying four adults of average weight, six dollars.

Class 4. Each craft capable of carrying five adults of average weight, six dollars.

Class 5. Each craft capable of carrying up to eight adults of average weight, nine dollars.

Class 6. Each craft capable of carrying up to ten adults of average weight, twelve dollars.

Class 7. Each craft capable of carrying up to fifteen adults of average weight, twenty-four dollars.

Class 8. Each craft capable of carrying sixteen or more adults of average weight, thirty dollars.

24. For the taking of undesirable fish from the waters of this state pursuant to section 20.1-06-05, six dollars for each hoop-net or trap, two dollars for each setline, and six dollars for each seine of fifty feet [15.24 meters] or any fraction thereof.

25. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, five dollars for each unit.

26. For an annual license to peddle fish species abounding in waters of this state, three dollars.

27. For an annual license to sell minnows or other live bait at wholesale, thirty dollars.

28. For an annual license to sell minnows or other live bait at retail, eight dollars.

29. For an annual license to operate a private fish hatchery, thirty dollars.

30. For a resident commercial frog license, fifty dollars.

31. For a nonresident commercial frog license, two hundred dollars.

32. For a resident frog license, three dollars.

33. For a resident husband and wife frog license, five dollars.

34. For a shooting preserve operating permit:

    a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or

    b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].

35. For an annual license to guide, one hundred dollars.

36. For a nonresident waterfowl hunting license, eight dollars.

37. For a nonresident husband and wife fishing license, thirty-five dollars.

38. For a trout and salmon license stamp, four dollars.

39. For a nonresident short-term three-day fishing license, eight dollars.

40. For a nonresident short-term three-day small game hunting license, issued between November fifteenth and the close of the upland game hunting season, thirty dollars.

41. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.

42. For a combination license, twenty-five dollars.

43. For a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents, two hundred ~~and~~ fifty dollars.

44. For a resident swan license, five dollars.

45. For a nonresident swan license, twenty dollars.

46. For a resident and nonresident sandhill crane license, five dollars.

47. For a resident commercial clam license, one hundred dollars.

48. For a nonresident commercial clam license, one thousand dollars.

49. For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the commissioner a surety bond in the sum of two thousand dollars.

The fees for these licenses and permits, except for motorboat license fees, must be deposited with the state treasurer and credited to the game and fish fund.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 1993, section 2 of this Act becomes effective on June 30, 1995, and section 3 of this Act becomes effective on January 1, 1996.

Disapproved March 25, 1993
Filed April 6, 1993

CHAPTER 638

SENATE BILL NO. 2447
(Senators Robinson, Evanson, O'Connell)
(Representatives Coats, Goffe)

INTERIM BOARD TEACHER NEGOTIATIONS

AN ACT to create and enact a new subsection to section 15-27.6-04 of the North Dakota Century Code, relating to negotiations between teachers and interim district school boards.

VETO

March 25, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
Bismarck, ND 58505

RE: Senate Bill 2447

Dear President Myrdal,

I am returning Senate Bill No. 2447, and hereby veto the same.

The bill seeks to establish guidelines for contract negotiations between teachers and the school board in a consortium district. I am, however, troubled by the following passage within the legislation:

"If the issue has not been resolved, the commission shall, between ten and twenty days after transmittal, make its finding and recommendations public. If any issue remains unresolved fifteen days prior to the election, the parties shall adopt the recommendation of the commission as to the unresolved issue."

Senate Bill 2447 basically establishes binding arbitration for consortium districts. The voters of North Dakota in June 1992 made their intentions clear by successfully referring binding arbitration legislation passed in the 1991 Legislature.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-27.6-04 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Negotiate with teachers pursuant to chapter 15-38.1. The parties may utilize the impasse procedures provided in section 15-38.1-13, except that

the aggrieved school board or representative organization shall request assistance from the commission no later than ninety days prior to the special election provided for in section 15-27.6-10. Within forty days after the request to render assistance is received, the findings and recommendations of the commission must be transmitted to the contending parties. If the issue has not been resolved, the commission shall, between ten and twenty days after the transmittal, make its findings and recommendations public. If any issue remains unresolved fifteen days prior to the election, the parties shall adopt the recommendation of the commission as to any unresolved issue. This section does not prevent the parties from continuing the good faith negotiation process during the impasse. The negotiated agreement between the parties must include a provision for the reduction of staff in participating districts and a provision, if the school district does not vote in favor of forming a new school district pursuant to subsection 4 of section 15-27.6-10, to rehire teachers nonrenewed by the participating school districts.

Disapproved March 25, 1993
Filed April 7, 1993

CHAPTER 639

HOUSE BILL NO. 1302
(Representatives A. Olson, D. Olsen)
(Senator Sand)

PUBLIC LIBRARY DIRECTORS COMPENSATION

AN ACT to amend and reenact section 40-38-03 of the North Dakota Century Code, relating to compensation of the board of directors of a public library.

VETO

April 2, 1993

The Honorable Rick Berg
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1302

Dear Speaker Berg,

I am returning House Bill No. 1302, and regretfully must veto the same.

As you know, I vetoed Senate Bill 2446 that was similar legislation which permitted modest payments to members of local airport authorities. House Bill 1302 allows for similar payments not to exceed $25.00 per day. Throughout my administration, I will remain vigilant with respect to the cost and the growth of government. That cost diverts funds from the private sector, which may actually impede the growth of our economy.

House Bill 1302 is permissive legislation, and places control at the local level - a principle with which I concur. Nonetheless, I have vetoed the bill with the following specific objections:

1. The bill presents an innocuous opportunity to spend a substantial amount of local taxpayer funds. North Dakota has 103 libraries, all of which are served by board members that meet throughout the year. Given the inertia of government, and the likelihood of authorizing these payments, I can see this bill costing local taxpayers thousands of dollars in short order.

2. Again, I believe that legislation of this nature is a step in the wrong direction given the number of boards and commissions throughout North Dakota at both the state and local level. Clearly, a good argument exists for modest payments to the North Dakota citizens who give of their time and energies for public service, on the local library board, Airport Authority, Chamber of Commerce, etc., but where do we draw the line?

3. Public service gives rise to another objection I have with the bill, which is whether it is necessary. In other words, is it necessary for North Dakota to permit payment to citizens for their service on the various boards and commissions throughout the state? All of us can think of many organizations, committees, boards, and commissions that the good citizens of North Dakota serve throughout their lifetime because of a personal interest in the program, in honor of civic duty, or service to their community, state or country.

I believe that North Dakotans will continue to provide unselfish service to our local libraries and communities without the financial incentive contemplated by House Bill 1302. The unselfish example of the board member who serves without remuneration, is the one I would hope we, as North Dakotans, will follow, rather than withholding that commitment for a small financial reward.

For these reasons, I regretfully must return House Bill 1302 to your chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-38-03 of the North Dakota Century Code is amended and reenacted as follows:

40-38-03. Board of directors - Appointment - Term of office - ~~No compensation~~ Compensation - Filling vacancies - Organization. The governing body of a ~~municipality which~~ city that has established a public library and reading room, or the board of county commissioners for a county library, shall appoint a board of five directors who must be residents of the ~~municipality~~ city or county, as the case may be, to govern ~~such~~ the library and reading room. One member of the governing body of the ~~municipality~~ city or designated representative ~~shall~~ must be a member of the board of directors of a ~~municipal~~ city library, and must be a resident of the ~~municipality which~~ city that establishes and maintains ~~such municipal~~ the library; and one member of the board of county commissioners or designated representative ~~shall~~ must be a member of the county board of directors. The terms of office of the members of the first board of directors ~~shall~~ must be as follows: one member shall hold office for one year; two members shall hold office for two years; and two members shall hold office for three years. The members, at their first meeting, shall determine the length of their respective terms by lot. Thereafter, the number of directors required to fill expired terms ~~shall~~ must be appointed each year, and each such director shall hold office for a term of three years from the first day of July in the year of ~~his~~ appointment and until ~~his~~ a successor has been appointed. No member of ~~such~~ the board ~~shall~~ may serve for more than two consecutive terms, after which an interval of one year must elapse before the same member may be reappointed. All vacancies on the board of directors ~~shall~~ must be reported by ~~such~~ the board to the governing body of the ~~municipality~~ city or the board of county commissioners, as the case may be, and ~~shall~~ must be filled thereby. ~~However, a member of any municipal board of directors of a public library and reading room who was appointed to such position by a school board prior to July 1, 1975, may serve upon such board for the residue of his unexpired term unless such position shall otherwise become vacant.~~ Appointments made to fill unexpired terms

~~shall~~ must be for the residue of the term only. ~~No~~ The board of directors of a public library may provide for the payment of compensation ~~shall be paid or allowed to~~ of not more than twenty-five dollars per day and the reimbursement for necessary expenses as provided in sections 44-08-04 and 54-06-09 incurred in the discharge of the duties of a director. Immediately after the appointment of its members, the board of directors shall meet and organize by electing a president. The governing board of a ~~municipality~~ city or county establishing public library service may, in lieu of appointing a library board, contract directly with a library board established by another governing body of a ~~municipality~~ city or county for the purpose of extending public library service.

Disapproved April 2, 1993
Filed April 8, 1993

CHAPTER 640

SENATE BILL NO. 2003
(Appropriations Committee)

HIGHER EDUCATION APPROPRIATION

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system and the various institutions of higher learning under the supervision of the state board of higher education; to authorize the industrial commission to issue and sell bonds for capital repair projects and special assessment costs; and to provide an exemption to the provisions of section 54-44.1-11.

VETO

April 8, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2003

Dear President Myrdal,

I am returning Senate Bill 2003, and hereby veto the same pursuant to Article V, Section 9 of the North Dakota Constitution.

The legislation establishes an appropriation for defraying the expenses of the North Dakota university system and the institutions of higher learning under the supervision of the state Board of Higher Education. The total funds appropriated is $464,008,349, including $255,212,947 from the general fund.

I have two major objections (and several concerns) to the bill, which follow:

1. The general fund appropriation is $9 million above the amount recommended in my proposed budget. This figure does not include almost $1 million in bonding authority which obligates costs in the future.

2. I do not believe additional funding will achieve the intended result of the university system's own Seven Year plan, which advocates management of change without growth.

I am committed to a university system that offers students the highest quality, is cost-effective, and is relevant to the needs of every North Dakotan. My proposed budget sufficiently addresses all three of these goals, and includes $6.5 million more than the current biennium.

In January, while constructing our budget, Chancellor Treadway concurred with our 1993-95 recommendation for higher education.

I share with Dr. Treadway the belief that the university system must change and reallocate, and this goal must be accomplished within the parameters of what the state can afford at a time of diminished resources. The challenge is to improve quality and service with the realization that higher education cannot expect increased appropriations from the state.

The Seven Year plan clearly states that future improvements in quality and the pursuit of new initiatives should be attained through reallocation of existing resources.

A primary area for reallocation is administrative costs, including executive management, support services, and other non-academic activities to improve funding for academics.

The university system must be lean and innovative; it must be flexible, adaptable, and quick to learn new ways when conditions change. In a nutshell, the university system must begin squeezing more bang out of every buck.

Corporate America has spent the last decade making revolutionary changes by decentralizing authority, focusing on quality, and basically bringing their products closer to the customers. The university system must follow suit.

In the face of the financial crisis in North Dakota, it is disappointing to see increased spending. In some circles, the belief is that the only way out of a public crisis is to tax and spend. But forcing North Dakotans to dig into their pockets to pay more taxes will break family budgets across the state.

We must recognize that the ability to pay higher taxes has all but evaporated in North Dakota.

For these reasons, I veto Senate Bill 2003, and respectfully return it to the Senate.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the state board of higher education and to the various institutions of higher learning under the supervision of the state board of higher education for the purpose of defraying its expenses, for the biennium beginning July 1, 1993, and ending June 30, 1995, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

Salaries and wages	$ 1,786,518
Information services	81,450

Operating expenses	454,900
Equipment	24,150
Computer network management	188,000
Higher education contingency fund	176,168
Professional student exchange program	1,108,870
Experimental program to stimulate competitive research	4,980,000
Scholars program	642,240
Perkins loan program match	102,885
Title II grant	300,000
Paul Douglas scholarship	99,420
Student financial assistance grants	3,943,086
Disabled student services	50,000
Native American scholarships	200,000
College technical administration	150,000
Total all funds	$ 14,287,687
Less estimated income	4,949,420
Total general fund appropriation	$ 9,338,267

Subdivision 2.

BISMARCK STATE COLLEGE

Salaries and wages	$ 13,231,438
Operating expenses	3,292,443
Equipment	469,777
Capital improvements	147,354
Total all funds	$ 17,141,012
Less estimated income	8,333,130
Total general fund appropriation	$ 8,807,882

Subdivision 3.

UNIVERSITY OF NORTH DAKOTA-LAKE REGION

Salaries and wages	$ 3,703,995
Operating expenses	1,165,284
Equipment	134,660
Capital improvements	35,832
Total all funds	$ 5,039,771
Less estimated income	2,039,656
Total general fund appropriation	$ 3,000,115

Subdivision 4.

UNIVERSITY OF NORTH DAKOTA - WILLISTON

Salaries and wages	$ 4,278,319
Operating expenses	1,191,215
Equipment	238,766
Capital improvements	140,380
Total all funds	$ 5,848,680
Less estimated income	2,989,753
Total general fund appropriation	$ 2,858,927

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Salaries and wages	$ 93,351,348
Operating expenses	27,032,230
Equipment	2,154,002
Capital improvements	1,781,290

Interactive video network	1,831,190
Total all funds	$126,150,060
Less estimated income	49,114,063
Total general fund appropriation	$ 77,035,997

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

Salaries and wages	$ 74,689,924
Operating expenses	21,930,657
Equipment	2,038,242
Special initiatives	120,000
Capital improvements	1,190,940
Total all funds	$ 99,969,763
Less estimated income	39,242,039
Total general fund appropriation	$ 60,727,724

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Salaries and wages	$ 19,225,213
Operating expenses	5,382,175
Equipment	1,268,544
Special initiatives	100,000
Capital improvements	211,782
Total all funds	$ 26,187,714
Less estimated income	7,015,638
Total general fund appropriation	$ 19,172,076

Subdivision 8.

DICKINSON STATE UNIVERSITY

Salaries and wages	$ 11,598,211
Operating expenses	3,230,481
Equipment	277,787
Special initiatives	50,000
Capital improvements	218,133
Total all funds	$ 15,374,612
Less estimated income	5,599,113
Total general fund appropriation	$ 9,775,499

Subdivision 9.

MAYVILLE STATE UNIVERSITY

Salaries and wages	$ 7,111,659
Operating expenses	1,879,836
Equipment	100,000
Special initiatives	150,000
Capital improvements	75,000
Total all funds	$ 9,316,495
Less estimated income	2,622,459
Total general fund appropriation	$ 6,694,036

Subdivision 10.

MINOT STATE UNIVERSITY

Salaries and wages	$ 25,869,160
Operating expenses	4,892,095
Equipment	669,382

Capital improvements	645,668
Total all funds	$ 32,076,305
Less estimated income	13,776,567
Total general fund appropriation	$ 18,299,738

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Salaries and wages	$ 9,308,738
Operating expenses	2,244,152
Equipment	212,308
Capital improvements	200,000
Special initiatives	400,000
Total all funds	$ 12,365,198
Less estimated income	3,466,540
Total general fund appropriation	$ 8,898,658

Subdivision 12.

NORTH DAKOTA STATE UNIVERSITY - BOTTINEAU

Salaries and wages	$ 3,360,307
Operating expenses	904,357
Equipment	92,280
Special initiatives	100,000
Capital improvements	76,050
Total all funds	$ 4,532,994
Less estimated income	1,380,316
Total general fund appropriation	$ 3,152,678

Subdivision 13.

NORTH DAKOTA FOREST SERVICE

Salaries and wages	$ 1,542,316
Operating expenses	368,733
Equipment	40,900
Capital improvements	31,061
Total all funds	$ 1,983,010
Less estimated income	663,040
Total general fund appropriation	$ 1,319,970

Subdivision 14.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Salaries and wages	$ 43,509,497
Operating expenses	16,459,089
Equipment	1,847,887
Total all funds	$ 61,816,473
Less estimated income	35,685,093
Total general fund appropriation	$ 26,131,380

Subdivision 15.

MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	$ 16,938,622
Operating expenses	8,085,572
Equipment	526,356
Total appropriation from institutional income	$ 25,550,550
Grand total general fund appropriation S.B. 2003	$255,212,947
Grand total special funds appropriation S.B. 2003	$208,795,402

Grand total all funds appropriation S.B. 2003 $464,008,349

SECTION 2. APPROPRIATION TRANSFER. The higher education contingency fund, disabled student services, and system capital projects in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 1 through 15 of section 1 as determined by the state board of higher education. The board shall notify the office of management and budget of the allocation of general fund authority from the higher education contingency fund, disabled student services, and system capital projects to the various entities and institutions and which line items in the various institutions and entities shall be adjusted.

SECTION 3. APPROPRIATION. All operating fund income received in excess of the estimated income line item appropriated to the entities in section 1 of this Act which is deposited in their respective operating funds in the state treasury is hereby appropriated. Any excess estimated income up to the following amounts may be spent subject to board of higher education approval:

INSTITUTION	AMOUNT
Bismarck State College	$ 166,663
University of North Dakota - Lake Region	40,793
University of North Dakota - Williston	59,795
University of North Dakota	982,281
North Dakota State University	784,841
North Dakota State College of Science	140,313
Dickinson State University	111,982
Mayville State University	52,449
Minot State University	275,531
Valley City State University	69,331
North Dakota State University - Bottineau	27,606
North Dakota Forest Service	13,261
University of North Dakota Medical Center	713,702
Medical Center Rehabilitation Hospital	511,011
Total	$3,949,559

Any additional excess estimated income can be spent only upon authorization of the emergency commission. Any funds received by the board of higher education and the entities of the North Dakota university system pursuant to federal acts, private grants, and other sources not deposited in the operating funds in the state treasury are hereby appropriated for the period beginning July 1, 1993, and ending June 30, 1995.

SECTION 5. TRANSFERS. Each institution or agency included in subdivisions 1 through 15 of section 1, upon approval of the state board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board for operations of the institution or agency. The board shall notify the office of management and budget of each transfer.

SECTION 6. EXEMPTION. The scholars program, higher education contingency fund, student financial assistance grants, and professional student exchange program appropriations contained in subdivision 1 of section 1 of chapter 3 of the 1991 Session Laws of North Dakota shall not be subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations shall be available during the biennium beginning July 1, 1993, and ending June 30, 1995.

SECTION 7. DEPOSIT OF FUNDS. Funds received from Minnesota by the board of higher education pursuant to the reimbursement provisions of the Minnesota-North Dakota public higher education and vocational technical education tuition reciprocity agreement authorized by chapter 15-10.1 shall be deposited in the board of higher education special revenue fund in the state treasury. These funds shall be used for the North Dakota student financial assistance program authorized by chapter 15-62.2.

SECTION 8. LEGISLATIVE INTENT. The legislative assembly recognizes the appropriations in section 1 may be insufficient to provide for both full funding of faculty and staff positions and for 1994-95 salary adjustments. Therefore, it intends that the board of higher education take such action as it considers necessary to allocate the funding to maintain quality academic programs.

SECTION 9. TRAINING - SALARIES. The $1,034,376 included in the institutions appropriations for training funding in section 1 may be used within each institution as determined appropriate by the board of higher education and the institutions for 1994-95 salary adjustments.

SECTION 10. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission, acting as the state building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of loan notes under North Dakota Century Code chapter 54-17.2, during the biennium beginning July 1, 1993, and ending June 30, 1995. The industrial commission may offer loan notes issued under this section for sale only to the Bank of North Dakota at a price that is as representative as possible of the current market interest rates for comparable loan notes purchased by the Bank of North Dakota. The proceeds of the loan notes and other available funds are hereby appropriated during the biennium beginning July 1, 1993, and ending June 30, 1995, to the institutions under the control of the board of higher education for the following capital repair projects and special assessment costs:

NAME OF AGENCY, DEPARTMENT, OR INSTITUTION	CONSTRUCTION/ ACQUISITION FUNDS	SPECIAL ASSESSMENTS
Bismarck State College	$ 81,344	$ 268,468
UND-Lake Region	76,561	5,141
UND-Williston		17,169
University of North Dakota	1,550,165	507,022
North Dakota State University	1,360,330	675,803
State College of Science	486,589	189,850
Dickinson State University	184,183	62,132
Mayville State University	249,808	
Minot State University	227,259	
Valley City State University	169,261	142,440
NDSU-Bottineau	114,500	
Total	$4,500,000	$1,868,025

The industrial commission shall issue loan notes authorized under this section with the condition that lease rental payments need not begin until July 1, 1995. This authority of the industrial commission to issue loan notes ends on June 30, 1995, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act to comply with any covenants entered into before that date.

Disapproved April 8, 1993
Filed April 16, 1993

CHAPTER 641

SENATE BILL NO. 2142
(Government and Veterans Affairs Committee)
(At the request of the Department of Corrections and Rehabilitation)

PAROLE BOARD COMPENSATION

AN ACT to amend and reenact section 12-59-02 of the North Dakota Century Code, relating to the compensation of parole board members.

VETO

April 8, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2142

Dear President Myrdal,

Attached please find Senate Bill No. 2142, which I am returning to the Senate and regretfully must veto the same.

The bill increases payments to the Parole Board to the same level as members of the Legislative Council. I know full well that the members of the Parole Board work diligently and at length in their service to the people of North Dakota, and could rightfully claim the modest compensation this bill authorizes.

The members of the Parole Board have served North Dakota exceptionally well. Nonetheless, as I have indicated in previous veto messages, I am reluctant to authorize new boards, programs, or expenditures at this time in our state's history. As deserving as the members of Parole Board may be, I cannot concur with Senate Bill 2142, and regretfully veto the same and return the bill to your chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Quorum - Compensation. The board shall organize by selecting a chairman. Meetings of the board shall be held at the state penitentiary

on call of the chairman as often as required to properly conduct the business of the board, but in any event not less than six times per year. Two members shall constitute a quorum, and no action shall be taken without the concurrence of at least two members. Members ~~shall be compensated at the rate of thirty dollars per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees~~ are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

Disapproved April 8, 1993
Filed April 15, 1993

CHAPTER 642

SENATE BILL NO. 2143
(Government and Veterans Affairs Committee)
(At the request of the Department of Corrections and Rehabilitation)

BOARD OF PARDONS COMPENSATION

AN ACT to amend and reenact section 12-55-02 of the North Dakota Century Code, relating to the compensation of members of the board of pardons.

VETO

April 8, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2143

Dear President Myrdal,

Attached please find Senate Bill No. 2143, which I am returning to the Senate and regretfully must veto the same.

The bill increases payments to the Board of Pardons to the same level as members of the Legislative Council. I know full well that the members of the Board work diligently and at length in their service to the people of North Dakota, and could rightfully claim the modest compensation this bill authorizes.

The members of the Board of Pardons have served North Dakota exceptionally well. Nonetheless, as I have indicated in previous veto messages, I am reluctant to authorize new boards, programs, or expenditures at this time in our state's history. As deserving as the members of the Board may be, I cannot concur with Senate Bill 2143, and regretfully veto the same and return the bill to your chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-55-02 of the North Dakota Century Code is amended and reenacted as follows:

12-55-02. Compensation of members of board of pardons. The ex officio members of the board of pardons shall receive no additional compensation for their

services upon such board. The two qualified electors appointed on the board by the governor ~~shall receive fifteen dollars for each day necessarily employed in attendance upon the sessions of the board and mileage for each mile [kilometer] actually and necessarily traveled in connection with such duties~~ are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. Such compensation and mileage shall be paid upon the presentation of the proper voucher containing an itemized statement of the number of days' attendance and the number of miles actually and necessarily traveled in connection with such duties, duly verified by the oath of the member of the board making the claim and approved by the president or secretary of the board. All such claims shall be audited and separate warrants shall be drawn upon the state treasurer for the amount allowed to be paid out of the state treasury.

Disapproved April 8, 1993
Filed April 15, 1993

CHAPTER 643

SENATE BILL NO. 2290
(Senator Tennefos)

MINORS ALCOHOL SCREENING

AN ACT to amend and reenact sections 5-01-08 and 39-20-14 of the North Dakota Century Code, relating to the use of screening tests as evidence of the consumption of alcoholic beverages by a person under twenty-one years of age.

VETO

April 8, 1993

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2290

Dear President Myrdal,

I am returning Senate Bill No. 2290, and veto the same.

The intent of the bill is to permit the use of screening tests authorized by Chapter 39-20, as evidence that a minor has consumed alcoholic beverages. However, the bill raises some troubling questions. For example:

1. Section 1 provides that the screening test under Chapter 39-20 can be used as evidence of a minor having consumed alcoholic beverages, which is prohibited by NDCC 5-01-08. Then, does a law enforcement officer have legal authority to insist that the minor take the screening test when the minor is a passenger in an automobile, or is not in an automobile at all, (in a park, in their residence, etc.)? In other words, under what circumstances can the screening test be required? Presently, an officer may request that a driver submit to a screening test, and the test results can be used as evidence of consumption of alcohol by a minor.

2. The bill mixes Chapters 5-01, and 39-20 which gives rise to another problem. Chapter 39-20, provides that a person must submit to a screening test and if the test is refused, then that person's driver's license shall be revoked as provided in Section 39-20-04. However, if the minor who is a passenger in an automobile refuses to submit to the test, can the driver's license then be revoked? Or, in a different case, does the minor who refuses the screening test in the community park risk his driver's license by refusing to submit to such a request?

For these reasons, I veto and return Senate Bill 2290 to your chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons under twenty-one years of age prohibited from purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing or attempting to purchase alcoholic beverages, consuming alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The screening test authorized by section 39-20-14 may be used as evidence of having consumed alcoholic beverages.

SECTION 2. AMENDMENT. Section 39-20-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol. A person may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01 or as proof of consumption of alcoholic beverages under section 5-01-08. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but

such refusal is sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the commissioner must not revoke a person's driving privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the state toxicologist as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

Disapproved April 8, 1993
Filed April 15, 1993

CHAPTER 644

HOUSE BILL NO. 1023
(Legislative Council)
(Interim Budget Committee on Government Administration)

OIL PUT OPTIONS

AN ACT to authorize the state to purchase oil put options; to provide an appropriation; and to provide an expiration date.

VETO

April 9, 1993

The Honorable Rick Berg
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1023

Dear Speaker Berg:

I am returning House Bill 1023, and respectfully veto the same.

The bill is designed to level out state oil revenues by "hedging" against a decline in the oil market. The bill also has some built-in protections, in that OMB initiates the process, subject to the approval of the Industrial Commission, and implementation by the State Investment Board.

However, in effect, the bill introduces North Dakota government to sophisticated, high-finance techniques that also involve high risk. The nature of an option is such that 100 percent of the investment can be lost as a result of market conditions.

I believe this type of financing for state government is dangerous in itself and sets a dangerous precedent for the future. I believe it is better for North Dakota to carefully plan its budget and allow for historical trends and variances with respect to oil production and prices, which affect oil revenue.

For these reasons, I veto House Bill 1023, and return the same to your chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Oil and gas tax revenue put options. Upon request of the director

of the office of management and budget and upon approval by the industrial commission, the state investment board may purchase oil put options for the office of management and budget. The purchase of put options must be designed to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. Put options may be purchased only at such times that the purchase assures that oil tax revenues plus the revenues from the sale of put options will be in excess of the oil tax revenues estimated for that level of production by the most recently adjourned legislative assembly. The office of management and budget shall report any purchases of put options to the budget section of the legislative council.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, for the biennium beginning July 1, 1993, and ending June 30, 1995, such amounts as may be necessary, but not to exceed the additional general fund revenues that will become available pursuant to the sale of oil put options as provided in this Act, to the office of management and budget to purchase oil put options through the state investment board.

SECTION 3. EXPIRATION DATE - SUSPENSION. This Act is effective through June 30, 1995, and after that date is ineffective.

Disapproved April 9, 1993
Filed April 21, 1993

CHAPTER 645

HOUSE BILL NO. 1286
(Representatives Clayburgh, Hagle, Kretschmar)

CHANGE OF JUDGE

AN ACT to amend and reenact section 27-05-27 and subsection 3 of section 29-15-21 of the North Dakota Century Code, relating to a demand for change of judge.

VETO

April 9, 1993

The Honorable Rick Berg
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1286

Dear Speaker Berg:

I am returning House Bill 1286, and respectfully veto the same.

The bill removes a litigants' ability to seek a different judge in a divorce proceeding, once a judge has made a decision in the case. Essentially, the effect of House Bill 1286 is to bind both litigants to the same judge, potentially for years to come. After a period of time, even the most well-intentioned and conscientious judge may become cynical about a particular litigant, his attorney, or his cause. That litigant should be able to seek a different judge in subsequent proceedings. Likewise, even the most well-intentioned and conscientious judge may bring a bias or prejudice that unconsciously affects the court's decision. Again, the litigant should be free to seek a different judge as current law presently allows. Presently, the law is not biased towards either litigant, and each has an equal right to remove a judge in their case.

The courts deal with issues as sensitive as child custody, visitation, changes of residency of minor children, grandparent visitation and significant economic issues pertaining to the family unit. Given those issues, I believe we should assure flexibility and objectivity in our judicial system to promote the ends of justice and fair play. The flexibility and sense of fair play that the litigants now enjoy will ultimately enhance respect for the court and its decision.

For these reasons, I respectfully veto House Bill 1286 and return it to your chambers.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-05-27 of the North Dakota Century Code is amended and reenacted as follows:

27-05-27. Motions before trial judge. ~~Except as provided by subsection 2 of section 29-15-21, any~~ Any motion for a new trial, settlement of a proposed case, judgment notwithstanding the verdict, or vacation or modification of an order, judgment, or other proceeding, must be presented and heard before the judge before whom the matter was heard, considered, or determined, unless for any reason the judge is unable to act.

SECTION 2. AMENDMENT. Subsection 3 of section 29-15-21 of the North Dakota Century Code is amended and reenacted as follows:

3. Any party who has been added, voluntarily or involuntarily, to the action or proceeding after the date of any occurrence in subsection 2 has the right to file a demand for change of judge within ten days after any remaining event occurs or, if all of those events have already occurred, within ten days after that party has been added. In any event, no demand for a change of judge may be made after the judge sought to be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard. ~~Any proceeding to modify an order for alimony, property division, or child support pursuant to section 14-05-24 or an order for child custody pursuant to section 14-05-22 must be considered a proceeding separate from the original action and the fact that the judge sought to be disqualified made any ruling in the original action does not bar a demand for a change of judge.~~

Disapproved April 9, 1993
Filed April 21, 1993

CHAPTER 646

HOUSE BILL NO. 1304
(Representatives Carlisle, Pyle, Rydell)
(Senators Keller, Lindgren, Naaden)

ELECTROLOGIST LICENSING

AN ACT to establish a board of electrology and to provide for the licensure of electrologists; to repeal chapter 43-38 of the North Dakota Century Code, relating to electrologists and electronic hair removal technicians; to provide a penalty; and to provide an effective date.

VETO

April 15, 1993

The Honorable Rick Berg
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1304

Dear Speaker Berg:

Attached please find House Bill 1304, which I have vetoed as of this date.

The bill creates a new board of five members for the purposes of licensing and regulating electrologists in North Dakota. There are 24 licensed electrologists in North Dakota at the present time who are currently subject to the licensing standards, rules and regulations of the State Health Council as provided in NDCC 43-38.

The present status of the law allows members of this occupation to practice their trade subject to licensing by the State Health Council. In the past, I have suggested that North Dakota's boards and commissions be reviewed for consolidation in the future to attain cost savings for the tax payer, and efficient service to the constituencies served by those boards and commissions.

I would much prefer that we leave the law in its current status, refrain from creating a new board, and consider combining the electrologists with similar occupations that are currently licensed and regulated by an existing board.

For these reasons, I have vetoed House Bill 1304 and respectfully return the same to you.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Board" means the board of electrology.
2. "Electrologist" means a person licensed by the board to engage in the practice of electrology.
3. "Practice of electrology" means the permanent removal of hair through the use of an electrical instrument that utilizes a needle or probe.

SECTION 2. Board - Appointment - Terms. The board consists of five members. The governor shall appoint five residents of the state to the board. The members must include one licensed physician or registered nurse, one layperson, and three licensed electrologists. The physician or registered nurse and electrologist members of the board must have at least two years' experience in their respective professions immediately preceding their appointment. The layperson member of the board or an immediate member of the layperson's family may not be an electrologist or have any financial interest in any business related to the practice of electrology. A member of the board must be appointed for three years, staggered so that the term of at least one member expires as of July first of each year. No member may serve for more than two successive three-year terms. Each member shall hold office until that member's successor is appointed and qualified. In July of each year the board shall meet and elect one member as president, one member as vice president, and one member as secretary-treasurer. The board shall hold meetings in the state as determined necessary by the board to discharge its duties. The board shall meet at least twice each year. Board members are entitled to receive travel expenses in an amount provided by law for state officials and employees when performing the official duties of the board.

SECTION 3. Removal of members of the board. The governor may remove from office any member of the board for neglect of duties under this Act, malfeasance or incompetency in office, or unprofessional conduct. The governor may fill any vacancy resulting from removal, resignation, or death of any member of the board.

SECTION 4. Duties of the secretary-treasurer - Expenses of the board. The secretary-treasurer of the board shall:

1. Keep a record of:
   a. The name and address of every electrologist licensed by the board;
   b. The license number and date of issuance of the license for each licensed electrologist;
   c. The renewal date of each license; and
   d. Other information as required by the board.
2. Prepare and distribute minutes of all board meetings.
3. Furnish, upon demand, any person a certified copy of records upon payment of a ten-dollar fee plus twenty-five cents for each page copied.

4. Prepare and submit to the governor and all licensed electrologists a detailed annual report on the income and expenses of the board and a list of licensed electrologists.

SECTION 5. Licensure of electrologists. No person may practice electrology whether for payment or free demonstration without first being an electrologist licensed by the board.

SECTION 6. Requisites for licensure. Any person who is eighteen years of age or more, is a high school graduate or has completed equivalent education, and has successfully completed the educational or training requirements of the board may submit an application for licensure to the secretary-treasurer of the board. An applicant is entitled to be issued a license as an electrologist if the applicant passes an examination in electrology approved by the board and pays a license fee of not more than one hundred dollars, as set by the board. The board may approve a national board certification examination developed by a national testing service. If there is an applicant for examination, the board shall conduct an examination at least once a year at a time and place designated by the board and shall notify the applicant of the applicant's score.

SECTION 7. Restriction on use of title. An electrologist licensed by the board may be held out as a "licensed electrologist" and may use the abbreviation "L.E." as a part of or immediately following that person's name, in connection with the profession. No person may use the title "licensed electrologist" or profess to be an electrologist or in any manner be represented as an electrologist in this state unless licensed in accordance with this Act.

SECTION 8. License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice. A license must be renewed before January first of each year. By December first of each year the secretary-treasurer of the board shall mail notice of renewal to each licensed electrologist's address as shown in the records of the board. The notice must include any requests for information necessary for renewal. The licensed electrologist may renew a license by sending a renewal fee of not more than seventy-five dollars, as set by the board, to the secretary-treasurer of the board. A license that is not renewed by January first lapses.

SECTION 9. Deposit of fees. The secretary-treasurer shall deposit all fees collected under this Act in a separate account for the administration of this Act.

SECTION 10. Revocation of licensing - Alternatives to revocation or suspension. The license of a licensed electrologist may be revoked, suspended, or annulled by the board upon any one or more of the following grounds:

1. That the person is guilty of gross malpractice or incompetence.
2. That the person's mental or physical health endangers public health or safety.
3. That the person fails to comply with rules of the board.
4. That the person is guilty of false or deceptive advertising.
5. That the person engages in unprofessional conduct.

SECTION 11. Administrative procedures. Any person may file a written complaint with the board seeking disciplinary action against an electrologist for violations of this Act or rules adopted by the board. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, suspension, or nonrenewal or other disciplinary action of a licensed electrologist, the board shall conduct a hearing. The board may dismiss a complaint that does not state facts that warrant action.

SECTION 12. Grandfather provisions. Upon receipt of evidence showing that a person is licensed in the practice of electrology on July 31, 1994, and that person meets the criteria established for licensure by the board, the board shall issue, upon application, a license to the person to continue to practice.

SECTION 13. Inspections - Rules. The board may make inspections as may be necessary to implement this Act and to provide adequate health safeguards. The board shall adopt rules governing education requirements for electrologists, continuing education requirements, and other rules necessary to carry out the purposes of this chapter. Any rules adopted by a state agency prior to January 1, 1993, which relate to functions covered by this Act, remain in effect until the rules are specifically amended or repealed by the board.

SECTION 14. Penalty. Any person who willfully violates this Act or rules adopted by the board is guilty of a class B misdemeanor.

SECTION 15. REPEAL. Chapter 43-38 of the 1991 Supplement to the North Dakota Century Code is repealed.

SECTION 16. EFFECTIVE DATE. This Act becomes effective August 1, 1994.

Disapproved April 15, 1993
Filed April 21, 1993

CHAPTER 647

SENATE BILL NO. 2403
(Senators Keller, Langley, Nalewaja)
(Representatives Belter, Keiser)

INSURANCE DEDUCTIBLE REBATE

AN ACT relating to the paying of an insurance deductible or offering of a rebate by a seller of goods or services; and to provide a penalty.

VETO

April 29, 1993

Alvin Jaeger
Secretary of State
State Capitol
600 East Boulevard, 1st Floor
Bismarck, ND 58505

RE: Senate Bill 2403

Dear Secretary Jaeger:

Pursuant to Article V, Section 9, I am sending you Senate Bill 2403, with my objections thereto, having vetoed the same.

The bill prohibits a person who performs repairs of physical damage to automobiles from offering rebates or otherwise paying all or part of any insurance deductible, and further prohibits a person from charging excessive rates for repair services of an amount equal to or greater than the insurance deductible that is rebated to the insured.

The bill is intended to prohibit the practice when a repair shop offers a $25.00 rebate for windshield repair as an incentive to the customer to use the services of the shop offering the rebate. The underlying premise of the bill suggests that physical damages (for example, windshields) are being repaired unnecessarily, or that the repair shop offers the rebate, and then adds the rebate to its charges to the insurance carrier.

There is no evidence to suggest current practices have caused an increase in insurance rates. Nor does the bill guarantee a reduction of insurance rates if the bill becomes law.

My objection to the bill is that it is essentially anti-consumer in nature. Under current practice, the consumer is free to seek out any repair shop he chooses for the repair of his damaged automobile. Currently, an insurance carrier has the authority to monitor and control the prices charged for a particular service. If the carrier feels that a repair shop is overcharging to recoup rebates the shop offers to its customer, then the carrier may refuse to authorize repairs at the "inflated" price or otherwise direct the insured to use a different shop.

In short, I believe that the bill injects controls into the market system unnecessarily, when there are adequate controls already in place to prevent overcharging, if any, in the auto repair industry.

For these reasons, I have vetoed Senate Bill 2403, and am filing the same with your office.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Insurance claims for excessive charges - Penalty.

1. A person who sells goods or services may not:

   a. Advertise or promise to provide a good or service, paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles, and to pay all or part of any applicable insurance deductible or to pay a rebate in an amount equal to all or part of any applicable insurance deductible; and

   b. Knowingly charge an amount for the good or service that exceeds the usual and customary charge by the person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by the person on behalf of an insured or remitted to an insured by the person as a rebate.

2. A person who is insured under an insurance policy that provides coverage for physical damage to automobiles may not submit a claim under the policy based on charges that are in violation of subsection 1 or may not knowingly allow a claim in violation of subsection 1 to be submitted, unless the person promptly notifies the insurer of the excessive charges.

3. A violation of this section is a class B misdemeanor.

Disapproved April 29, 1993
Filed April 30, 1993

CHAPTER 648

HOUSE BILL NO. 1002
(Appropriations Committee)

HUMAN SERVICE CENTER FUNDING TRANSFER

AN ACT to provide an appropriation for defraying the expenses of the department of human services, an appropriation from the lands and minerals trust fund to the common schools trust fund, an appropriation from the revolving loan fund maintained in the Bank of North Dakota, and an appropriation from the state aid distribution fund; to provide for the transfer of appropriations between agencies and institutions and to require budget section approval of alternative programs at the state hospital; to create and enact a new subsection to section 23-01-03, a new subsection to section 23-17.2-02, a new subsection to section 50-06-05.1, a new section to chapter 50-06.2, and a new chapter to title 50 of the North Dakota Century Code, relating to the duties of the North Dakota health council, to the definition of long-term care facility, to the certificate of need program, to the lease of developmental center facilities or properties, to payment of services by county and state matching funds, and to aid to aged, blind, and disabled persons; to create and enact section 2 to House Bill No. 1274 as approved by the fifty-third legislative assembly, relating to residential care and services for the developmentally disabled and to provide an expiration date for that Act; to amend and reenact subsection 4 of section 14-09-08.4, section 14-09-08.8, subsection 7 of section 23-17.2-02, sections 23-17.2-03, and 50-01-01 of the North Dakota Century Code and section 4 of chapter 561 of the 1991 Session Laws of North Dakota, relating to amendment of support orders to meet the medical needs of children, to the definition of health care facility, to the scope of the certificate of need program, to state assistance for county poor relief costs, to matching funds for senior citizen services, and to extending an appropriation for the developmental center; to repeal sections 50-01-09.2 and 50-06-14.2 of the North Dakota Century Code, relating to state assistance for county poor relief costs and to rates payable to basic care facilities to provide for a review of the clubhouse project; to provide legislative intent regarding developmentally disabled provider salary increases, senior citizens mill levy match funding, a legislative council study of human service center funding formula, and establishment of a management information system for service payments for elderly and disabled by the department; to require the department of human services to develop basic care ratesetting methodology; to provide legislative intent regarding state hospital income; to provide an effective date; and to declare an emergency.

VETO

May 5, 1993

Alvin Jaeger
Secretary of State
State Capitol
600 East Boulevard, 1st Floor
Bismarck, ND 58505

RE: House Bill 1002

Dear Secretary Jaeger:

Pursuant to Article V, Sections 9 and 10, I am filing House Bill 1002 with your office, having signed the same, and having vetoed Section 4 as authorized by the North Dakota Constitution.

Section 4 of the bill concerns $4.6 million appropriated to the human service centers in the Department of Human Services. Those funds are to be prioritized according to documents filed with the Legislative Assembly on April 24, 1993. However, the Section goes on to restructure that appropriation with the approval of the budget section of the Legislative Assembly.

My objection to the bill is that it appropriates $4.6 million in funds that are not specifically prioritized in the bill itself. In addition, the budget section may reprioritize that spending as it deems appropriate. In short, I am asked to approve $4.6 million in spending, without knowing specifically where and how those funds are to be expended.

For these reasons, I have vetoed Section 4 of House Bill 1002, and file the same with your office.

Sincerely,

Edward T. Schafer
Governor

NOTE: For the full text of House Bill No. 1002, containing section 4, see chapter 2.

NOTE: Attorney General's Opinion 93-05 dated May 25, 1993, concludes that the Governor's veto of the first sentence of Section 4 of House Bill No. 1002 was valid but that the veto of the remainder of that section is "void and has no effect."

CHAPTER 649

HOUSE BILL NO. 1003
(Appropriations Committee)

VOCATIONAL AND TECHNICAL EDUCATION GRANTS

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the school for the deaf, the school for the blind, and the state library; to provide exemptions from the provisions of section 54-44.1-11; to provide for an appropriation of funds from the displaced homemaker fund; to provide an appropriation for a legislative council study; to provide for the contingent distribution of a separate and additional per student payment; to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to cooperating school districts; and to amend and reenact section 2 of chapter 701 of the 1989 Session Laws of North Dakota, as amended by section 1 of chapter 656 of the 1991 Session Laws of North Dakota, sections 15-27.3-19, 15-27.6-10, and 15-38-17 as amended by section 11 of Senate Bill No. 2418, as approved by the fifty-third legislative assembly, sections 15-40.1-06, 15-40.1-07, 15-40.1-08, 15-40.1-09, 15-40.1-16, 15-40.1-18, and 15-40.2-04 of the North Dakota Century Code, relating to the foundation aid program, appointments to the education standards and practices board and the administrator's professional practices board, the expiration date concerning withdrawals from special reserve funds, school district reorganization, per student payments, and transportation aid.

VETO

May 5, 1993

Alvin Jaeger
Secretary of State
State Capitol
600 East Boulevard, 1st Floor
Bismarck, ND 58505

RE: House Bill 1003

Dear Secretary Jaeger:

Attached please find House Bill 1003, which I have signed, and am filing with your office pursuant to Article V, Section 10 of the North Dakota Constitution.

However, pursuant to Article V, Section 10, I have struck the sum of $240,000 for Vocational and Technical Education on page 1 of the bill, as authorized by the Constitution.

Earlier this year, I signed into law Senate Bill 2022, which was the Appropriation bill for the State Board of Vocational Education, and which included an appropriation of $25 million of all funds (and included $14 million in general fund appropriations). House Bill 1003 includes $240,000 in general funds for the

purchase of technical equipment, which has been previously funded entirely with Federal dollars. The $240,000 could otherwise have been utilized for the Foundation Aid program (amounting to approximately $2 per student). I am concerned about following a dangerous precedent, whereby a program is not included in a department's budget, and which is then incorporated into another department's budget utilizing general fund dollars in the absence of federal support for the program. As the Federal Government begins to terminate funding for programs, we in North Dakota must look at our own priorities and determine whether those programs should continue, and whether we can pay for them.

For these reasons, I have partially vetoed House Bill 1003, and respectfully file the same with your office.

Sincerely,

Edward T. Schafer
Governor

NOTE: For the full text of House Bill No. 1003, including the vetoed line item, see chapter 3.

CHAPTER 650

HOUSE BILL NO. 1038
(Legislative Council)
(Interim Health Care Committee)

HEALTH TASK FORCE

AN ACT to require the North Dakota health task force to develop prospective all payers ratesetting or other health care financing systems that cover institutional and professional providers of health care and to develop mechanisms to provide health coverage for all North Dakotans; and to declare an emergency.

VETO

May 5, 1993

Alvin Jaeger
Secretary of State
State Capitol
600 East Boulevard, 1st Floor
Bismarck, ND 58505

RE: House Bill 1038

Dear Secretary Jaeger:

Pursuant to Article V, Section 9, I am filing with your office, House Bill 1038, with my objections thereto, having vetoed the same.

I believe that health care reform is critical to the economy and well-being of North Dakota, as well as our nation. North Dakota must take steps to design appropriate reforms in its health care system and must use people with the expertise to design reform appropriately. At present, North Dakota is participating in a grant by the Robert Wood Johnson Foundation which is designed to research and develop a plan of reform for North Dakota. North Dakota's health task force was established under the auspices of that grant. The task force answers to the state health officer and may be an efficient vehicle capable of developing a strategy for appropriate reforms in our health care system. Additionally, present law requires the health officer to study health care problems, and to plan for their solutions. Since the state health officer is accountable to the Governor's Office, and since I am committed to see appropriate health care reform, I believe we have the mechanism in place to accomplish this goal.

Finally, the bill unnecessarily adds an additional layer of Governmental oversight, directing the task force to report to the Legislative Council (or an interim committee designated by the Legislative Council). Current law directs the health task force to report to the health officer directly.

For these reasons, I believe that is in North Dakota's best interest to veto House Bill 1038 and to use North Dakota's current resources to develop and implement appropriate reform in our health care system.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Health council's health task force - Development of health care financing and coverage - Report to legislative council. The state health council's health task force shall develop prospective all payers ratesetting or other health care financing systems that cover institutional and professional providers of health care. The health task force also shall develop mechanisms to provide health coverage for all state residents. During the 1993-94 interim, the task force shall report to the legislative council or an interim committee designated by the legislative council on the progress of the developments. If the task force recommends proposed legislation to be introduced in the fifty-fourth legislative assembly, the task force shall inform the legislative council or the interim committee designated by the legislative council of the proposed legislation before July 1, 1994.

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

Disapproved May 5, 1993
Filed May 6, 1993

CHAPTER 651

HOUSE BILL NO. 1514
(Representatives Henegar, A. Carlson, Torgerson)
(Senators B. Stenehjem, Mathern, Jerome)
(Approved by the Delayed Bills Committee)

MOTORBOAT PROGRAMS TRANSFER OF FUELS TAXES

AN ACT to create and enact two new sections to chapter 20.1-02 of the North Dakota Century Code, relating to the creation of the motorboat programs and safety account; to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to motorboat license fees; and to provide an effective date.

VETO

May 5, 1993

Alvin Jaeger
Secretary of State
State Capitol
600 East Boulevard, 1st Floor
Bismarck, ND 58505

RE: House Bill 1514

Dear Secretary Jaeger:

Pursuant to Article V, Sections 9 and 10, I am filing with your office House Bill 1514, having signed the same, but also having vetoed Section 2 pursuant to the line item veto authorized by Article V, Section 10 of the North Dakota Constitution.

The tourism industry is critical to North Dakota's economic prosperity. Boating and fishing activities on North Dakota's lakes by our citizens and visitors have a substantial economic impact on the state and are a vital part of the state's recreational resources. I believe we have adequate funding available in the Game and Fish Department to provide reasonable boating access for our citizens and visitors to our state. I am absolutely committed to the development of our tourism industry, and to providing reasonable access to all who wish to use the state's water resources. As part of my commitment, I am asking the Game and Fish Director to take steps necessary to accumulate funds for this purpose, and to begin the task of providing proper boating access.

Section 2 of the bill diverts monies from the Highway Tax Distribution Fund for the purposes of construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, etc.

The objectionable section establishes a new program, but does not make funds available for its intended purpose until June 30, 1995. It is also conditioned upon House Bill 1399 (gas tax) becoming law. The bill sets up a scenario for the 1993-95 biennium (however unlikely), of diverting highway tax funds for constructing boat

launching facilities, and leaving insufficient funds to fully fund the state's match for federal highway construction dollars. That could result in activating an additional $.01 gas tax under House Bill 1399. Please recall that Federal Government provides $4.00 for highway construction funds for every $1.00 the state of North Dakota is able to provide as a match.

Even if the above scenario does not occur during the 1993-95 biennium, the program still diverts highway construction dollars for future years to come, which compounds North Dakota's current difficulty in matching federal dollars for highway construction. So, the intended funding source uses "high risk" dollars that could cost the state $4.00 in federal highway construction funds for every $1.00 that is diverted to this program.

By exercising this partial veto, and making a commitment now, I believe we can provide the kind of boating access that North Dakotans and the tourism industry deserve today.

For these reasons, I have vetoed Section 2 of House Bill 1514.

Sincerely,

Edward T. Schafer
Governor

NOTE: For the full text of House Bill No. 1514, including section 2, see chapter 227.

INITIATED MEASURE, APPROVED

CHAPTER 652

CONGRESSIONAL TERM LIMITS

An initiated measure to create and enact sections 16.1-01-13, 16.1-01-14, and 54-12-01.05 of the North Dakota Century Code, relating to eligibility for placement on the ballot for United States Senator and Representative in Congress, to the people's intent in enacting this measure, and to the effect of certain opinions of the attorney general; if section 16.1-01-13 is held unconstitutional, to create and enact section 16.1-01-13.1 of the North Dakota Century Code, relating to eligibility for placement on the ballot for United States Senator and Representative in Congress; and to provide for application of this measure and for a contingent effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Section 16.1-01-13 of the North Dakota Century Code is created and enacted to read as follows:

16.1-01-13. Term limits for United States senators and representatives in Congress. A person is permanently ineligible to have that person's name placed on the ballot at any election for the office of United States senator or representative in Congress if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years.

SECTION 2. If section 16.1-01-13 of the North Dakota Century Code, as enacted by section 1 of this measure, is held to be unconstitutional, section 16.1-01-13.1 of the North Dakota Century Code is created and enacted to read as follows:

16.1-01-13.1. Term limits for United States senators and representatives in Congress. A person is ineligible to have that person's name placed on the ballot at any election for the office of United States senator or representative in Congress if, by the start of the term for which the election is being held, that person will have served as a United States senator or a representative in Congress, or in any combination of those offices, for at least twelve years. However, if that person is still otherwise eligible to hold the office, the disqualification imposed by this section ceases after two years have elapsed since the disqualification last affected that person's eligibility for placement on the ballot.

SECTION 3. Section 16.1-01-14 of the North Dakota Century Code is created and enacted to read as follows:

16.1-01-14. Statement of intent. In enacting this measure, the people of North Dakota:

1. Recognize that, along with the rest of the people of the United States, we have bestowed certain powers on the state and federal governments, and the governmental power flows ultimately from the people, not to them.

2. Do so in the partial exercise of our duty to elect representatives in Congress, under Article I, section 2 of the United States Constitution, and our duty to elect United States Senators, under the 17th Amendment to the United States Constitution.

3. Recognize that the United States Supreme Court has never held that the people of a state do not have the constitutional power to establish term limits for federal legislators from their state.

4. Recognize that certain restrictions are placed on our ability to choose federal legislators, such that we could not, for example, elect a 28-year old to the Senate or require a religious test for a federal legislator.

5. Assert that, aside from the requirements explicitly imposed by the United States Constitution, our power with respect to election of federal legislators is plenary.

6. Note that, under the United States Constitution, we have certain rights to control suffrage in elections, regulating such matters as residency, ballot access, and voting methods. As the possessors of the power to regulate suffrage, we also have the power to regulate certain qualifications of the agents we appoint by exercising our suffrage.

7. Exercise the legislative power we reserved to ourselves in Article III, Section 1 of the North Dakota Constitution.

8. Recognize that, just as the federal Hatch Act [5 U.S.C. §7324 et seq.] restricts the candidacies of otherwise eligible persons from holding elected office, we have the same salutary purpose as does the Hatch Act, namely preventing an incumbent party from using government power to entrench itself permanently into government office.

9. Are mindful of the United States Supreme Court's statement, in Garcia v. San Antonio Metro Transit Authority, 469 U.S. 528, 551 (1985), that state control of the election process is supposed to be a protection of the state peoples from the national government.

10. Recognize that increased concentration of power in the hands of incumbents has made this state's electoral system less free, less competitive, and most importantly, less representative.

11. Recognize that our interests are best served by having our United States senators and representatives in Congress be mindful of their origins and return to our ranks whence they came.

12. Make the following declarations and historical findings:

    a. James Madison, in No. 57 of The Federalist Papers, predicted that the House of Representatives would always be responsive to the will of the people because that house would be bound by the same laws they impose on the people. His prediction was wrong and Congress has arrogated to itself powers not granted to the people, a recent notorious example

being the bank of the House of Representatives in which members were allowed to kite checks. His prediction was wrong in that Congress has oppressed the people with laws from which it exempts itself, recent examples including minimum wage, discrimination, occupational safety, and other laws.

b. The appearance of corruption and the lack of competitiveness for entrenched incumbency seats has lessened voter participation and that is counter-productive to the purposes of a representative republic.

c. Our vital interests in maintaining the integrity of the political process have been harmed by these and other factors. Therefore, term limitation is the best method by which we can insure that our vital interests are guarded.

13. Believe this measure is constitutional and intend it to be so. Therefore, even if a court holds any portion of this measure unconstitutional, thereby substituting its own judgment for that we have expressed in enacting this measure, the Legislative Council shall require the publisher of the North Dakota Century Code to include the text of this measure, in the manner as if not so held but with appropriate annotation, to stand as a testament to our expressed will, and as a memorial to the defiance of that will by whatever court holds this measure unconstitutional. Furthermore, if any part of this measure is held unconstitutional, we intend that the rest of it be deemed effective, to the maximum extent permitted under section 1-02-20.

SECTION 4. Section 54-12-01.05 of the 1991 Supplement to the North Dakota Century Code is created and enacted to read as follows:

54-12-01.05. Limitation of effect of certain opinions of attorney general. Any opinion of the attorney general, or any other public official other than a court of competent jurisdiction, that this measure is unconstitutional, is not binding on any other public official, and all other public officials are free to act in accordance with the wishes of the people of North Dakota as expressed in this measure.

SECTION 5. Application of measure; contingent effective date. This measure does not affect the right of a person to serve out the rest of a term to which that person had been elected when the relevant part of this measure took effect. Service before and after this measure takes effect affects eligibility for placement on the ballot as follows:

1. Unless section 2 of this measure becomes effective, service as a United States Senator or representative in Congress in a term ending before this measure becomes effective does not affect a person's eligibility for placement on the ballot.

2. If section 1 of this measure is held unconstitutional, section 2 of this measure becomes effective at the first primary election more than 90 days after the case holding section 1 unconstitutional becomes final in the court of last resort or, if not appealed to a court of last resort, more than 90 days after the expiration of the time for appealing to such a court. It then governs the future eligibility for placement on the ballot

of all candidates for United States senator and representative in Congress.

Approved November 3, 1992 162,150 to 129,930

NOTE: This was measure No. 5 on the general election ballot.

INITIATED MEASURES, DISAPPROVED

CHAPTER 653

WATER DEVELOPMENT AND FUNDING

An initiated measure to establish comprehensive water development objectives including construction, design and planning of water projects, putting the Missouri River to statewide beneficial use, and developing other North Dakota water resources. The measure imposes a one-half of one percent sales or excise tax on all sales at retail except mobile homes used for residential or business purposes, farm machinery and farm machinery repair parts, agricultural irrigation equipment, resale of mobile homes, natural gas, and highway construction contracts entered before January 1, 1993. The tax is collected beginning January 1, 1993, and ending Midnight on December 31, 1999. The net revenue generated by the tax is to be deposited in the resources trust fund to be used to implement the comprehensive water development objectives of the initiated measure.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Water development - Intent - Objectives. The citizens of North Dakota have determined that the federal government is reducing its commitment to water resource development and that North Dakota can no longer rely on traditional federal programs to develop the state's water resources in a wise and timely manner. The citizens of North Dakota have also determined that North Dakota should now take the initiative in providing assured water supplies throughout the state, from the Missouri River and other available water resources, as the state enters the twenty-first century. Assured water supplies are essential for municipal and rural uses, recreation, wildlife, irrigation, processing agricultural products, and the creation of new jobs in North Dakota.

Therefore, the citizens are establishing and funding a comprehensive statewide water development program. The specific objectives of this program will be:

1. To establish North Dakota's claim to its proper share of the Missouri River.

2. To complete the southwest pipeline project for distribution of water to cities and rural areas in southwestern North Dakota.

3. To develop the northwest area water supply program for distribution of water to cities and rural areas in northwestern and north central North Dakota.

4. To negotiate the appropriate agreements with the United States, with cost sharing by the state or political subdivisions if necessary, to complete principle features of the Garrison Diversion Unit, for distribution of water for multiple uses.

5. To assume the operation and maintenance of Garrison Diversion Unit features to facilitate the delivery of Missouri River water for multiple uses.

6. To deliver Missouri River water to stabilize Devils Lake.

7. To provide water for irrigation for the development and diversification of agriculture.

8. To deliver Missouri River water to the James, Sheyenne, and Red rivers for multiple uses.

9. To establish a permanent revolving fund for grant and loan programs for municipal, rural, domestic and industrial water supply and water distribution needs.

10. To manage and protect environmental and wildlife resources in the implementation of this water development program.

11. To develop, design, and construct any additional water management facilities as are necessary for the full utilization and management of water resources throughout the state, including such projects as the Souris River flood control, Sheyenne River flood control, local water management and recreation projects, and other local water requirements.

SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Separate and additional tax on retail sales. There is imposed a tax of one-half of one percent, in addition to any other tax provided by law, upon the gross receipts of retailers from all sales at retail which are taxable under this chapter, except those items in subsection 2 of section 57-39.2-02.1 and section 57-39.2-03.6. In the case of any contract for the construction of highways, roads, streets, bridges, and buildings awarded prior to January 1, 1993, the contractor receiving the award is liable only for the sales tax at the rate of tax in effect on the date of the contract. The tax commissioner may provide by administrative rule for alteration of the bracket system provided under section 57-39.2-08.2 to properly reflect the rate of tax including the tax imposed by this section. The tax imposed by this section must be included in the "general sales tax rate" as used in sections 54-17.2-21, 57-39.2-26.1, and section 4 of this Act.

SECTION 3. AMENDMENT. Section 57-39.2-26 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26. Allocation of revenue. ~~All~~ Except as otherwise provided by sections 54-17.2-21, 57-39.2-26.1, and section 4 of this Act, all moneys collected and received under this chapter shall be paid into the state treasury and shall be credited by the state treasurer to the general fund. Moneys deposited with the commissioner as security for the payment of tax, penalties, or costs due shall be deposited and accounted for as provided in subsection 3 of section 57-39.2-12.

SECTION 4. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Allocation of sales, use, and motor vehicle excise tax revenues to resources trust fund. Notwithstanding any other provision of law, the net revenue from the separate and additional sales, use, and motor vehicle excise taxes imposed by sections 2, 5, and 6 of this Act must be deposited by the state treasurer in the resources trust fund. A portion of sales, use, and motor vehicle excise tax

collections equal to fifty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the resources trust fund. The state tax commissioner shall certify to the state treasurer the amount of sales, use, and motor vehicle excise tax net revenues that must be deposited in the resources trust fund as provided in this section.

SECTION 5. A new section to chapter 57-40.2 of the North Dakota Century Code is created and enacted as follows:

Separate and additional use tax. An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of one-half of one percent of the purchase price of the property. An excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use or consumption in this state at the rate of one-half of one percent of the fair market value of the property at the time it was brought into this state. The tax imposed under this section applies to any activity that is taxable under this chapter, except those items in subsection 2 of section 57-40.2-02.1, and the tax imposed under this section is in addition to any other tax imposed by law. In the case of any contract for the construction of highways, roads, streets, bridges, and buildings awarded prior to January 1, 1993, the contractor receiving the award is liable only for the use tax at the rate of tax in effect on the date of the contract.

SECTION 6. A new section to chapter 57-40.3 of the North Dakota Century Code is created and enacted as follows:

Separate and additional motor vehicle excise tax. There is imposed an excise tax at the rate of one-half of one percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state. The tax imposed under this section is in addition to any other tax provided by the law.

SECTION 7. AMENDMENT. Section 57-40.3-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.3-10. Transfer of revenue. ~~All~~ Except as otherwise provided in sections 54-17.2-21, 57-39.2-26.1, and 4 of this Act, all moneys collected and received under this chapter must be transmitted monthly by the registrar to the state tax commissioner and must be paid to the state treasurer to be transferred and credited to the general fund.

SECTION 8. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective 30 days after adoption. Sections 2, 3, 5, 6, and 7 of this Act are effective for taxable events occurring after December 31, 1992, and before January 1, 2000. Section 4 of this Act is effective for sales, use, and motor vehicle excise tax collections received by the state tax commissiner after February 28, 1993.

Disapproved November 3, 1992 110,045 to 181,960

NOTE: This was measure No. 4 on the general election ballot.

CHAPTER 654

VEHICLE SEARCHES

An initiated measure to create a new Section of the Century Code relating to law enforcement and the stopping and searching of motor vehicles and/or their passengers without probable cause.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

That the stopping and/or searching of vehicles and the occupants thereof at random or otherwise without probable cause by any law enforcement officer(s) is prohibited. Any evidence obtained in violation of this statute shall not be admissible in any administrative, civil, or criminal proceeding.

Disapproved November 3, 1992 114,959 to 184,978

NOTE: This was measure No. 6 on the general election ballot.

CHAPTER 655

WASTE FACILITY DISPOSAL FEES

An initiated measure to establish an environmental protection and recycling fund from moneys collected from fees for waste disposal or incineration in North Dakota. The fund shall be used for recycling programs and for cleanup of land, air or water pollution.

The measure establishes a 50 cent per ton fee on waste generated within 100 miles of the final disposal site. The measure also establishes a fee on waste generated more than 100 miles from the final disposal point, equal to the cost of waste disposal at the disposal point closest to where it was generated less the actual cost of disposal at the final disposal facility. Waste site operators must collect the fee and may retain 1% of the fee collected.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

23-29-16. Environmental Protection and Recycling Fund.

1. There is hereby established an Environmental Protection and Recycling Fund. The Environmental Protection and Recycling Fund shall be funded by fees imposed upon the generators of waste which is ultimately disposed of in a final disposal facility in North Dakota or incinerated in North Dakota. The fund shall be administered by the Department of Health and Consolidated Laboratories which may make such regulations relating thereto as it deems appropriate. The proceeds of the fund, after the expenses of administration are met, shall be used as follows:

   (a) Fifty percent (50%) for research on and implementation and maintenance of recycling programs, including education of the public thereon; and

   (b) Fifty percent (50%) for the cleanup of land, air, or water polluted, contaminated, or otherwise found to be detrimental to the health, safety, or welfare of the people and wildlife of North Dakota, including any necessary research in connection therewith.

2. Beginning January 1, 1993, a fee is imposed on the disposal or incineration of waste in a final disposal facility in North Dakota. The amount of the fee shall be as follows:

   (a) The fee for waste generated within 100 miles of the final disposal site shall be 50 cents per ton, or part thereof.

   (b) The fee for waste generated beyond 100 miles from the disposal site shall be the dollar amount computed by (1) determining the cost of

disposing of the waste, including tipping fees and state and local government fees, in the final disposal facility that could accept the waste and is closest to the area at which the waste was generated, and (2) subtracting therefrom the fee actually charged for the disposal or incineration of the waste by the owner or operator of the final disposal facility in North Dakota. The owner or operator of the final disposal facility is responsible for collecting the fee and may deduct and retain one percent (1%) of the fees collected as compensation for collecting and remitting them. The fees shall be remitted to the Department on a quarterly basis, and the owner or operator shall maintain such records thereof as the Department deems necessary. The fees thus collected shall be deposited in a special account in the State Treasury.

3. The term "waste" includes but is not limited to solid waste, incinerator ash, medical waste, hazardous waste, municipal waste, special waste, and any other waste however denominated. The fees imposed by this section do not, however, apply to inert waste, oil field exploration and production waste, and solid waste disposed of on site at energy conversion facilities and coal mining operations. For purposes of this section, an incinerator shall be considered and treated as a "final disposal facility." No additional fee shall be imposed pursuant to this section on incinerator ash from waste on which a fee herein imposed has been previously paid.

4. Each container of waste generated beyond 100 miles from the final disposal site shall be accompanied by a notarized certificate by a representative of the generator or transporter (1) accurately and completely describing its contents, the place of origin of the waste, and the name and address of its generator; (2) containing an itemized computation of the cost determination required for determination of the fee provided by 23-29-16(2)(b), together with the name, address, and telephone number of (a) the person making such computation and (b) the facility from which the fee determination information was obtained; and (3) to which is attached a photograph(s) accurately depicting all waste contained in the container.

5. Violation of subsection (4) of this section, in addition to other penalties prescribed by this Chapter, shall be a Class A Misdemeanor.

6. The legislature may from time to time supplement the fund from other revenue sources if deemed advisable.

Disapproved November 3, 1992 144,781 to 145,793

NOTE: This was measure No. 7 on the general election ballot.

REFERRED MEASURE, APPROVED

CHAPTER 656

SUNDAY CLOSING

Approval by referendum of House Bill No. 1046 of the Fifty-second Legislative Assembly which provided for removal of the prohibition against conducting business between the hours of twelve noon and twelve midnight on Sunday. House Bill No. 1046 did not affect the prohibition against conducting business between the hours of twelve midnight on Saturday and twelve noon on Sunday.

Approved June 9, 1992 94,725 to 43,988

NOTE: This was measure No. 2 on the primary election ballot.

REFERRED MEASURE, DISAPPROVED

CHAPTER 657

FINAL OFFER RESOLUTION

Disapproval by referendum of House Bill No. 1593 of the Fifty-second Legislative Assembly, which required school boards and teachers' representatives to mediate impasses involving salaries or benefits and required final offer resolution whenever requested by either party to the negotiations.

Disapproved June 9, 1992 66,804 to 69,684

NOTE: This was measure No. 3 on the primary election ballot

CONSTITUTIONAL AMENDMENTS, APPROVED

CHAPTER 658

VETERANS' COMPENSATION

Senate Concurrent Resolution No. 4069, Chapter 755, 1991 Session Laws, proposed by the Fifty-second Legislative Assembly of the State of North Dakota, to create and enact a new section to the Constitution of North Dakota, relating to payment of adjusted compensation to North Dakota veterans of United States military involvement in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States and authorizing an appropriation or issuance of bonds of the state to provide necessary funds.

STATEMENT OF INTENT

This measure allows the state to provide compensation to certain resident North Dakota veterans. The veterans entitled to compensation are those who were members of the regular active duty armed forces and who served in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict or who died while on orders to or from the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict. This measure allows the Legislative Assembly to provide an appropriation or to provide for issuance of bonds of the state to provide necessary funds.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the next statewide election, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section of the Constitution of North Dakota is created and enacted as follows:

The legislative assembly may provide for the payment of adjusted compensation to North Dakota residents who were members of the regular active duty armed forces and who served in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States or to heirs of North Dakota residents who were members of the regular active duty armed forces and who died while on orders to or from the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States. The legislative assembly may provide a direct appropriation or provide for the issuance, sale, and delivery of bonds of the state of North Dakota in such principal amounts as determined by the legislative assembly to be necessary for the payment of adjusted compensation under this section. Adjusted compensation under this section may be paid at such rates, terms of service, and conditions as the legislative assembly provides.

Approved June 9, 1992 82,448 to 52,882

NOTE: This was measure No. 1 on the primary election ballot.

CHAPTER 659

EFFECTIVE DATE OF LEGISLATION

House Concurrent Resolution No. 3016, Chapter 756, 1991 Session Laws, proposed by the Fifty-second Legislative Assembly of the State of North Dakota, for the amendment of section 13 of article IV of the Constitution of North Dakota, relating to the effective date of legislation.

STATEMENT OF INTENT

This amendment provides that all legislation, except appropriation and tax measures, would be effective on August first after filing with the secretary of state or ninety days after filing if filed on or after August first and before January first of the following year. The effective date for appropriation and tax measures would remain July first.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 13 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1992, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly during its eighty natural meeting days takes effect on ~~July~~ August first after its filing with the secretary of state, or if filed on or after

August first and before January first of the following year ninety days after its filing ~~whichever comes later~~, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

Approved November 3, 1992 146,823 to 127,500

NOTE: This was measure No. 1 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, DISAPPROVED

CHAPTER 660

STATE LAND AND MINERAL INTEREST EXCHANGES

Senate Concurrent Resolution No. 4020, Chapter 757, 1991 Session Laws, proposed by the Fifty-second Legislative Assembly of the State of North Dakota, for the amendment of section 6 of article IX of the Constitution of North Dakota, relating to certain exchanges of land and mineral rights.

STATEMENT OF INTENT

This amendment allows for the exchange of land between the board of university and school lands and private owners and allows for the exchange of all mineral interests with the approval of the legislative assembly.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IX of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1992, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. No original grant school or institutional land shall be sold for less than the fair market value thereof, and in no case for less than ten dollars ($10.00) per acre, provided that when lands have been sold on contract and the contract has been canceled, such lands may be resold without reappraisement by the board of appraisal. The purchaser shall pay twenty (20) percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six (6) percent of the original purchase price. An amount equal to not less than three (3) percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on purchase price. The purchaser may pay all or any installment or installments not yet due to any interest paying date. If the purchaser so desires, he may pay the entire balance due on his contract with interest to date of payment at any time and he will then be entitled to proper conveyance.

All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, and notice of such sale shall be published once each week for a period of three weeks prior to the day of sale in a legal newspaper published nearest the land and in the newspaper designated for the publication of the official proceedings and legal notices within the county in which said land is situated.

No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of the contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, the contract of sale for such land shall, if the board of university and school lands so determine, by it, be declared null and void. No contract of sale heretofore made under the provisions of this section of the constitution as

then providing shall be affected by this amendment, except prepayment of principal may be made as herein provided.

Any of said lands that may be required for townsite purposes, schoolhouse sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, airplane landing fields, fairgrounds, public highways, railroad right of way, or other railroad uses and purposes, reservoirs for the storage of water for irrigation, irrigation canals, and ditches, drainage ditches, or for any of the purposes for which private lands may be taken under the right of eminent domain under the constitution and laws of this state, may be sold under the provisions of this article, and shall be paid for in full at the time of sale, or at any time thereafter as herein provided. Any ~~of said lands and any other~~ lands controlled by the board of university and school lands, including state ~~coal~~ mineral interests, ~~may,~~ with the approval of ~~said~~ the board, may be exchanged for lands and ~~coal~~ mineral interests of the United States, the state of North Dakota ~~or,~~ any county or municipality thereof ~~as the legislature may provide~~, or any private individual or entity as the legislative assembly may provide, and the lands so acquired shall be subject to the trust to which the lands exchanged therefor were subject~~, and the state shall reserve all mineral and water power rights in land so transferred, except coal mineral interests approved for exchange by the board of university and school lands under this section~~.

When any of said lands have been heretofore or may be hereafter sold on contract, and the purchaser or his heirs or assigns is unable to pay in full for the land purchased within twenty years after the date of purchase and such contract is in default and subject to being declared null and void as by law provided, the board of university and school lands may, after declaring such contract null and void, resell the land described in such contract to such purchaser, his heirs or assigns, for the amount of the unpaid principal, together with interest thereon reckoned to the date of such resale at the rate of not less than three (3%) percent, but in no case shall the resale price be more than the original sale price; such contract of resale shall be upon the terms herein provided, provided this section shall be deemed self-executing insofar as the provisions for resale herein made are concerned.

Disapproved November 3, 1992 126,497 to 148,599

NOTE: This was measure No. 2 on the general election ballot.

CHAPTER 661

BICENTENNIAL TRUST FUND

House Concurrent Resolution No. 3035, Chapter 758, 1991 Session Laws, proposed by the Fifty-second Legislative Assembly of the State of North Dakota, to create and enact a new section to article X of the Constitution of North Dakota, relating to the creation of a Bicentennial trust fund; and to provide an effective date.

STATEMENT OF INTENT

This amendment would create a Bicentennial trust fund, the principal and interest of which is to be released on January 1, 2089, to a Bicentennial Commission, or if a Bicentennial Commission is not in existence on January 1, 2089, to the Governor, for use in commemorating and celebrating the 200th birthday of the state of North Dakota.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article x of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1992, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is created and enacted as follows:

The bicentennial trust fund is a permanent trust fund to be used for the purpose of commemorating and celebrating the bicentennial of the state of North Dakota. The interest earned on the money in the fund accrues to the bicentennial trust fund. On January 1, 2089, or as soon thereafter as practicable, the principal and interest in the trust fund must be transferred to the bicentennial commission or, if no bicentennial commission is in existence on January 1, 2089, to the governor, for expenditure to commemorate and celebrate the bicentennial of the state of North Dakota. Any amounts held by the state treasurer in trust for the North Dakota bicentennial commission pursuant to Senate Bill No. 2301 enacted by the fifty-second legislative assembly must be transferred to the bicentennial trust fund.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on January 1, 1993.

Disapproved November 3, 1992 120,479 to 164,030

NOTE: This was measure No. 3 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, PROPOSED

CHAPTER 662

SENATE CONCURRENT RESOLUTION NO. 4014
(Senators Freborg, Keller, Lips)
(Representatives Gates, Mahoney, Tollefson)

COAL TRUST FUND EXPENDITURES

A concurrent resolution for the amendment of section 21 of article X of the Constitution of North Dakota, relating to expenditures from the permanent coal trust fund for clean coal demonstration projects.

STATEMENT OF INTENT

This amendment provides that funds may be expended from the permanent coal trust fund for clean coal demonstration projects approved by the industrial commission.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 21 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1994, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 21 of article X of the Constitution of North Dakota is amended and reenacted as follows:

Section 21. Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite research, development, and marketing as provided by law. An additional twenty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for clean coal demonstration projects approved by the industrial commission.

Filed March 25, 1993

CHAPTER 663

SENATE CONCURRENT RESOLUTION NO. 4011
(Senators Yockim, Freborg, Redlin)
(Representatives Soukup, Tollefson, Kaldor)

OIL EXTRACTION TAX REVENUES

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to deposit of certain oil extraction tax revenues in the common schools trust fund and the foundation aid stabilization fund and providing for use of the principal and income of the foundation aid stabilization fund; and to provide an effective date.

STATEMENT OF INTENT

This measure requires a portion of oil extraction tax revenues to be deposited in the common schools trust fund and an equal portion to be deposited in the foundation aid stabilization fund, with income of the foundation aid stabilization fund to be transferred to the state general fund. Beginning July 1, 1995, the amount of extraction tax revenue deposited in the two funds pursuant to this measure would equal twenty percent of the extraction tax revenue from taxable oil produced in the state.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1994, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is created and enacted as follows:

Twenty percent of the revenue from oil extraction taxes from taxable oil produced in this state must be allocated as follows:

1. Fifty percent must be deposited in the common schools trust fund.

2. Fifty percent must be deposited in the foundation aid stabilization fund in the state treasury, the interest income of which must be transferred to the state general fund on July first of each year. The principal of the foundation aid stabilization fund may be expended only upon order of the governor, who may direct such a transfer only to offset foundation aid reductions that were made by executive action pursuant to law due to a revenue shortage.

SECTION 2. EFFECTIVE DATE. If approved by the electors, this measure is effective for tax revenue from oil and gas produced after June 30, 1995.

Filed March 25, 1993

CHAPTER 664

HOUSE CONCURRENT RESOLUTION NO. 3014
(Representatives Poolman, Austin, R. Berg)
(Senators W. Stenehjem, Nalewaja, DeMers)

BOARD OF HIGHER EDUCATION MEMBERS

A concurrent resolution for the amendment of subsections 2 and 4 of section 6 of article VIII of the Constitution of North Dakota, relating to the appointment of a student member to the state board of higher education.

STATEMENT OF INTENT

This amendment provides for the gubernatorial appointment of a student member to the state board of higher education and provides that the new member's term begins on July 1, 1995.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to subsections 2 and 4 of section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1994, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 6 of article VIII of the Constitution of North Dakota are amended and reenacted as follows:

2. a. The state board of higher education ~~shall consist~~ consists of ~~seven~~ eight members~~, all of whom shall be~~. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who ~~shall~~ have resided in this state for not less than five years immediately preceding their ~~appointment, to be appointed by the governor, by and with the consent of~~ appointments. These seven appointments are subject to confirmation by the senate~~, from a list of names selected as hereinafter provided~~.

~~There shall not be on said~~ The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction of the state board. Except for the student member, no more than one graduate of any ~~one of the institutions~~ institution under the jurisdiction of the state board of higher education may serve on the board at any one time. ~~No~~ Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board~~, nor shall any~~ and no employee of any such institution may be eligible for membership on the state board of higher education for a period of two years following the termination of ~~his~~ employment.

~~On or before the first day of February, 1939, the~~ The governor shall nominate from a list of three names for each position, selected by the unanimous action of the president of the North Dakota educational association, the chief justice of the supreme court, and the superintendent of public instruction, and, with the consent of a majority of the members-elect of the senate, shall appoint from ~~such~~ the list ~~as such~~ to the state board of higher education seven members~~, whose terms shall commence on the first day of July, 1939, one of which terms shall expire on the thirtieth day of June, 1940, and one on the thirtieth day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946~~. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for seven years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled.

b. In the event any nomination made by the governor is not consented to and confirmed by the senate ~~as hereinbefore provided~~, the governor shall again nominate a candidate ~~for such office,~~ selected from a new list~~, prepared in the manner hereinbefore provided, which~~. The nomination shall be submitted to the senate for confirmation~~,~~ and ~~said~~ the proceedings shall ~~be continued~~ continue until ~~such appointments have~~ an appointee has been confirmed by the senate~~,~~ or the session of the legislature ~~shall have~~ has adjourned.

c. ~~When any~~ If a term expires or a vacancy occurs when the legislature is not in session, the governor may appoint from a list selected as ~~hereinbefore~~ provided, a member who shall serve until the opening of the next session of the legislature, at which time ~~his~~ the appointment ~~shall~~ must be certified to the senate for confirmation~~, as above provided; and if the appointment be~~. If the appointee is not confirmed by the thirtieth legislative day of ~~such~~ the session, ~~his~~ the office shall be deemed vacant and the governor shall nominate ~~from a list selected as hereinbefore provided,~~ another candidate for ~~such~~ the office ~~and the~~. The same proceedings shall be followed as are ~~above~~ set forth~~; provided further, that when~~ in this section. If the legislature ~~shall be~~ is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate ~~his~~ a successor from a list selected as above set forth, within the first thirty days of ~~such~~ the session~~,~~ and upon confirmation by the senate ~~such~~ the successor shall take office at the expiration of the incumbent's term ~~of the incumbent~~. No person who has been nominated and whose nomination the senate has failed to confirm~~, shall be~~ is eligible for an interim appointment. On or before July first of each year, beginning in 1995, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

4. Each appointive member of the state board of higher education, except the student member, shall receive ~~such~~ compensation ~~as may be determined~~ set by the legislative assembly for the time actually spent devoted to the duties of ~~his~~ the member's office~~, and, in addition,~~. All members shall

receive ~~his~~ necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of ~~his~~ their office.

Filed April 6, 1993

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 665

HOUSE CONCURRENT RESOLUTION NO. 3003
(Legislative Council)
(Interim Special Education Committee)

ASSISTANCE FOR AT-RISK CHILDREN URGED

A concurrent resolution urging state agencies to work together to assist young at-risk children and their families.

WHEREAS, the North Dakota early childhood tracking system is a comprehensive early childhood intervention program designed to monitor children up to age 5 who may be at risk for developmental, social, or academic delays; and

WHEREAS, the North Dakota early childhood tracking system provides quality direct and indirect services to young children and their families; and

WHEREAS, the North Dakota early childhood tracking system provides a mechanism for communication and cooperation among agency representatives, thereby maximizing the exchange of information and enhancing the delivery of services; and

WHEREAS, the North Dakota early childhood tracking system has improved the coordination of services among participating agencies, thereby resulting in better identification of children needing services and elimination of service duplication;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly encourages state agencies to work together and maximize all available resources to assist young at-risk children and their families; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the State Superintendent of Public Instruction, the State Health Officer, and the executive director of the Department of Human Services.

Filed March 30, 1993

CHAPTER 666

HOUSE CONCURRENT RESOLUTION NO. 3004
(Legislative Council)
(Interim Special Education Committee)

EARLY CHILDHOOD TRACKING STUDY

A concurrent resolution directing the Legislative Council to study the North Dakota early childhood tracking system.

WHEREAS, the North Dakota early childhood tracking system is a comprehensive early intervention program designed to monitor children up to age 5 who may be at risk for developmental delays; and

WHEREAS, the North Dakota early childhood tracking system is a federally funded cooperative project involving the Department of Health and Consolidated Laboratories, the Department of Human Services, and the Department of Public Instruction; and

WHEREAS, the North Dakota early childhood tracking system is expanding to better serve the needs of children throughout the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the progress of the North Dakota early childhood tracking system since the conclusion of the 1991-92 interim study, the need for further expansion of the program, and the continuation of funding through federal or other sources; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 12, 1993

CHAPTER 667

HOUSE CONCURRENT RESOLUTION NO. 3005
(Legislative Council)
(Interim Special Education Committee)

SPECIAL EDUCATION DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the provision of services to special needs children from a multiagency perspective.

WHEREAS, special education often involves an intertwining of children's health, medical, social, and educational needs; and

WHEREAS, special education often involves the provision of services requiring multiagency responsibility; and

WHEREAS, multiagency responsibility often leads to excessive complexity in program administration and interagency inefficiencies;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the delivery of services to special needs children from a multiagency perspective and consider whether services might be enhanced and efficiencies might be improved through better cooperation or consolidation of administrative functions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 12, 1993

CHAPTER 668

HOUSE CONCURRENT RESOLUTION NO. 3008
(Legislative Council)
(Interim Waste Management Committee)

SOLID WASTE MANAGEMENT STUDY

A concurrent resolution directing the Legislative Council to study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans.

WHEREAS, the problems associated with solid waste management are continuing to impose substantial burdens on the state and local governments and are of great concern to residents of the state; and

WHEREAS, as a result of legislation adopted by the Fifty-second Legislative Assembly, eight solid waste management districts were established and the district boards were required to adopt solid waste management plans; and

WHEREAS, during the 1991-92 interim the Legislative Council's Waste Management Committee conducted studies relating to solid waste management and monitored the development and operation of the solid waste management districts; and

WHEREAS, because the solid waste management districts are still in the evolutionary process, continued monitoring of the development of the districts and the operation and effect of solid waste management plans developed by the district boards and the State Department of Health and Consolidated Laboratories is necessary;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems associated with solid waste management and the operation and effect of solid waste management districts and solid waste management plans; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 669

HOUSE CONCURRENT RESOLUTION NO. 3009
(Appropriations Committee)

BLOCK GRANT FUNDS

A concurrent resolution regarding the approval of state agency use of block grant funds, and authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants as passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 on July 29, 1981, thus creating several categories of "block" grant programs; and

WHEREAS, legislatures of the states are required to conduct public hearings; and

WHEREAS, the public hearing requirements for block grant moneys expected for the next biennium by the Office of Management and Budget have been met by the Appropriations Committees; and

WHEREAS, the Fifty-third Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by the Congress after the recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 1994 and thus its public hearing responsibility for grants not approved by the Fifty-third Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the appropriation bill for the Office of Management and Budget, as it is passed by this Legislative Assembly, is the Legislative Assembly's approval and contains directions on the use of block grant moneys for the period ending September 30, 1995; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of block grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the Budget Section authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-third Legislative Assembly through September 30, 1995, and the Budget Section shall utilize the methods and procedures for holding the hearings authorized by this resolution and giving notice of those hearings as it deems appropriate.

Filed March 30, 1993

CHAPTER 670

HOUSE CONCURRENT RESOLUTION NO. 3010
(Representatives Wald, Brown, Martin, Wardner)
(Senators Goetz, Urlacher)

WAYNE HERMAN CONGRATULATED

A concurrent resolution congratulating Wayne Herman on winning the Professional Rodeo Cowboys' Association world bareback rider championship.

WHEREAS, the Legislative Assembly recognizes and honors North Dakota citizens for their accomplishments of national significance; and

WHEREAS, Wayne Herman, a native of Golden Valley who now lives in Dickinson, earned the title of 1992 Professional Rodeo Cowboys' Association world champion bareback rider after the National Finals Rodeo; and

WHEREAS, Wayne Herman's skill, determination, toughness, hard work, and success as evidenced by his world championship are characteristics held in high esteem in the Roughrider state; and

WHEREAS, Wayne Herman's dedication to charitable causes and excellence in his chosen sport set a fine example for young people to give their utmost to their communities and chosen professions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly takes great pride and pleasure in extending its heartiest congratulations to Wayne Herman for his outstanding accomplishment in winning the 1992 Professional Rodeo Cowboys' Association world bareback rider championship; and

BE IT FURTHER RESOLVED, that the Secretary of State send an enrolled copy of this resolution to Wayne Herman.

Filed January 13, 1993

CHAPTER 671

HOUSE CONCURRENT RESOLUTION NO. 3013
(Representatives Porter, Kroeber, Torgerson, Goffe)

SCHOOL ACCREDITATION STANDARDS STUDY

A concurrent resolution directing the Legislative Council to study accreditation standards utilized by the Department of Public Instruction, including those set forth in the constitution or statutes of this state.

WHEREAS, the Constitution of North Dakota sets forth certain requirements for the public schools of this state, including that they be free and uniform; and

WHEREAS, certain requirements for the public schools of this state are established by statute, including minimum curricula and length of school year; and

WHEREAS, certain accreditation standards utilized by the Department of Public Instruction govern school improvement, administration, personnel, instruction, student evaluations, student personnel services, library media services, and school policies, as established by the Department of Public Instruction;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study accreditation standards utilized by the Department of Public Instruction, including those set forth in the constitution or statutes of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 672

HOUSE CONCURRENT RESOLUTION NO. 3015
(Representatives Porter, C. Carlson, Price)
(Senator Krebsbach)

TAX PREFERENCE STUDY

A concurrent resolution directing the Legislative Council to study tax preferences under existing law, with emphasis on prevention of unfair competitive advantages to entities receiving tax preferences.

WHEREAS, many provisions of law allow tax preferences for various worthy purposes including charitable, educational, medical, health care, agricultural, industrial, and other purposes; and

WHEREAS, in changing economic and other circumstances an entity that receives a tax preference may come into direct business competition with a private concern that does business without benefit of a tax preference; and

WHEREAS, it is incumbent upon the Legislative Assembly to assure that tax preferences that have been granted in the past continue to accomplish the purposes for which they were granted and do not operate to provide a competitive advantage in situations that were not anticipated at the time the tax preferences were created;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the tax preferences allowed under existing law with emphasis on preferences under sales and use, income, and property taxes, to the end that unfair competitive advantages are eliminated in situations in which otherwise exempt activities come into direct competition with private business concerns; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 673

HOUSE CONCURRENT RESOLUTION NO. 3018
(Representatives Rydell, Keiser, Hanson, Christopherson)

MULTICOUNTY HEALTH DISTRICTS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of forming multicounty health districts statewide.

WHEREAS, the first multicounty health district was formed in 1943; and

WHEREAS, as of 1993, there are 24 local public health departments, including seven multicounty health districts, seven single county health districts, four county-city health districts, and six single county health departments; and

WHEREAS, the 24 organized local public health departments provide public health services and programs to 95.6 percent of the total state population in 49 counties; and

WHEREAS, the fragmentation of local public health departments may be a barrier to the delivery of public health services and programs throughout the state; and

WHEREAS, local public health departments desire a study to determine the feasibility of multicounty health district formation statewide;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of forming multicounty health districts statewide; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 6, 1993

CHAPTER 674

HOUSE CONCURRENT RESOLUTION NO. 3019
(Representatives Nelson, Mahoney, Wardner, Gates, Boucher, Cleary)

VETERANS' PREFERENCE LAWS

A concurrent resolution directing the Legislative Council to study veterans' preference employment laws.

WHEREAS, the veterans' preference statutes have been established to provide those with military service an advantage in vying for state job openings; and

WHEREAS, the application of existing veterans' preference laws may not be consistent with the intent of those laws and may result in unfair or inconsistent practices or misunderstandings by the parties involved in the public hiring process; and

WHEREAS, the responsibilities of veterans and employers in the grievance process can result in misunderstandings between veterans and employers; and

WHEREAS, study is needed to determine if the current veterans' preference laws meet the needs of the public, veterans, and employers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is directed to study the feasibility and desirability of revising state veterans' preference laws relating to public employment; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 6, 1993

CHAPTER 675

HOUSE CONCURRENT RESOLUTION NO. 3020
(Representatives Poolman, Rydell, Stenehjem, Kelsch)
(Senators Maxson, W. Stenehjem)

CRIMINAL COURT DATA STUDY

A concurrent resolution directing the Legislative Council to study the data collection systems relating to the criminal justice and quasi-criminal civil systems in North Dakota, including law enforcement, prosecutors, and courts, and the data collection systems of other states.

WHEREAS, it is critical to a comprehensive analysis and evaluation of our criminal justice and quasi-criminal civil systems in North Dakota to have access to consistent and coordinated data from all components in that system; and

WHEREAS, current data collection systems within the criminal justice and quasi-criminal civil systems in North Dakota are not consistent or coordinated; and

WHEREAS, it would greatly enhance the ability of all components of the criminal justice and quasi-criminal civil systems in North Dakota to plan for and project future needs within their own areas of responsibility, if a consistent and coordinated method of collecting data were in place;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the present methods of collecting data within the criminal justice and quasi-criminal civil systems in this and other states, and the desirability of implementing a systemwide data collection process in North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 12, 1993

CHAPTER 676

HOUSE CONCURRENT RESOLUTION NO. 3022
(Representatives Torgerson, Wald, Skarphol, Poolman, Brown)

MISSOURI RIVER RESERVOIR MANAGEMENT

A concurrent resolution urging the United States Army Corps of Engineers to manage Missouri River mainstem reservoir storage in a manner that will maintain adequate and sufficient levels of water in Lake Sakakawea and Lake Oahe.

WHEREAS, the Missouri River, which includes Lake Sakakawea and Lake Oahe, is a natural resource of great economic importance to the citizens of North Dakota, constituting 96 percent of the state's total surface water supply; and

WHEREAS, the availability of Missouri River water for outdoor recreation and tourism, municipal and industrial water supply, agriculture, hydropower generation, and fish and wildlife uses is an essential component of the state's economic infrastructure; and

WHEREAS, the Legislative Assembly of North Dakota is opposed to the drawdown of Lake Sakakawea and Lake Oahe in a manner that directly favors lower Missouri River Basin water uses at the expense of upper Missouri River Basin water uses; and

WHEREAS, Missouri River mainstem reservoir storage, which includes Lake Sakakawea and Lake Oahe, is at its lowest level since 1967 when the mainstem reservoir system was first filled; and

WHEREAS, 60 of 76 boat ramps on Lake Sakakawea and 7 of 12 boat ramps in the North Dakota portion of Lake Oahe are unusable which has detrimentally impacted the state's recreation and tourism industry;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the United States Army Corps of Engineers to manage Lake Sakakawea and Lake Oahe in a manner that will maintain adequate and sufficient levels of water in Lake Sakakawea and Lake Oahe; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the District Engineer, Omaha District, United States Army Corps of Engineers; the Division Engineer, Missouri River Division, United States Army Corps of Engineers; the Chief of Engineers, United States Army Corps of Engineers; the Assistant Secretary of the Army; the Secretary of the Army; the Governor; and to each member of the North Dakota Congressional Delegation.

Filed March 30, 1993

CHAPTER 677

HOUSE CONCURRENT RESOLUTION NO. 3023
(Representatives Dobrinski, Freier, Grumbo)
(Senators Andrist, Schoenwald, Dotzenrod)

RAILROAD CROSSING SAFETY STUDY

A concurrent resolution directing the Legislative Council to study railroad crossing safety to improve railroad crossing safety.

WHEREAS, there are approximately 5,000 public railroad crossings and an additional 2,000 private railroad crossings in this state; and

WHEREAS, accidents at railroad crossings can result in major property damage, serious personal injuries, and fatalities; and

WHEREAS, there is a possibility that federal standards for railroad crossing safety may be implemented; and

WHEREAS, new train markings and improved signals and signs are being experimented with in other states and Canada; and

WHEREAS, improved railroad crossing education, enforcement, and hardware policies reduce the number of accidents at railroad crossings;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study railroad crossing safety in this and other states and the education, enforcement, and hardware programs available to increase public safety at railroad crossings; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 12, 1993

CHAPTER 678

HOUSE CONCURRENT RESOLUTION NO. 3024
(Representatives Nelson, Schindler, Boucher)
(Senators Holmberg, Mushik)

STATE LAW AND RULE AVAILABILITY STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of making the North Dakota Century Code, the North Dakota Administrative Code, the North Dakota Session Laws, and other legislative publications available in mediums other than published volumes, including CD-ROM and diskettes.

WHEREAS, the state provides access to the current version of state laws only through published volumes; and

WHEREAS, the North Dakota Century Code, North Dakota Administrative Code, North Dakota Session Laws, and other legislative publications are prepared by the use of computer technology; and

WHEREAS, recent technological advances have resulted in more information becoming available in other mediums, including CD-ROM and diskettes; and

WHEREAS, the number of requests for computer access to the state's laws has increased in recent years; and

WHEREAS, although the copyright to the North Dakota Century Code is assigned to the state for official use, subject to the reservation of contractual rights by the publisher, the publisher claims the exclusive right to sell the North Dakota Century Code in mediums other than hard copy; and

WHEREAS, any resulting decrease in the number of copies of the North Dakota Century Code sold by the publisher due to sale of the laws in other mediums would likely result in an increase in the price of the hard copy volumes sold to the state and to private subscribers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of making the North Dakota Century Code, the North Dakota Administrative Code, the North Dakota Session Laws, and other legislative publications available in mediums other than hard copy, including CD-ROM and diskettes, and that the study particularly address the rights of the publisher of the North Dakota Century Code and the cost ramifications to the state and to private subscribers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 679

HOUSE CONCURRENT RESOLUTION NO. 3025
(Representatives Dobrinski, Freier)
(Senator Jerome)

FORT BERTHOLD RESERVATION BRIDGES

A concurrent resolution urging Congress to replace Four Bears Bridge on the Fort Berthold Indian Reservation and to build two bridges to connect the Fort Berthold communities of Twin Buttes, White Shield, and Mandaree, North Dakota.

WHEREAS, this state recognizes the need to replace Four Bears Bridge and to build two bridges in order to prevent the isolation of communities on the Fort Berthold Indian Reservation; and

WHEREAS, the Fort Berthold Indian School Board Association has expressed the need for a centrally located high school with dormitory facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Congress of the United States to replace Four Bears Bridge and to erect two bridges connecting the communities of Twin Buttes, White Shield, and Mandaree, North Dakota; and

BE IT FURTHER RESOLVED, that the Fifty-third Legislative Assembly urges the creation of a centrally located high school with dormitory facilities near the proposed bridge sites; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, to the governing body of the Three Affiliated Tribes of the Fort Berthold Reservation, to the director of the State Department of Transportation, and to the State Superintendent of Public Instruction.

Filed April 6, 1993

CHAPTER 680

HOUSE CONCURRENT RESOLUTION NO. 3026
(Representatives Boucher, Nelson)

SCHOOL RESTRUCTURING FACULTY IMPACT STUDY

A concurrent resolution directing the Legislative Council to study the loss of employment by teachers and administrators as a result of school district reorganizational, cooperative, and restructuring programs, including the possibility of changes in retirement benefits for those teachers and administrators.

WHEREAS, the state of North Dakota, has through school district boundary restructuring, cooperative, and reorganizational programs, whether mandatory or permissive, encouraged the consolidation of school districts; and

WHEREAS, although the restructuring of school districts may result in certain efficiencies and economies, there are casualties of the process that receive very little attention; and

WHEREAS, the result of school district annexations, reorganizations, dissolutions, or other restructuring is often the nonrenewal of teacher and administrator contracts; and

WHEREAS, study of the effects of school district restructuring could result in consideration of legislation to alleviate some unintended results;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the effects of school district reorganizational, cooperative, or restructuring programs on the employment of teachers and administrators; and

BE IT FURTHER RESOLVED, that the Legislative Council study whether teachers and administrators who have lost their jobs as a result of school district annexations, reorganizations, dissolutions, and other restructuring and who have a combined total of years of service credit and years of age which equals 80 should be eligible to receive full retirement benefits, under the Teachers' Fund for Retirement; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations together with any legislation required to implement the recommendations to the Fifty-fourth Legislative Assembly.

Filed April 6, 1993

CHAPTER 681

HOUSE CONCURRENT RESOLUTION NO. 3028
(Representative Dobrinski)

TRIBAL LAND TRANSFER STUDY

A concurrent resolution directing the Legislative Council to study whether the state of North Dakota may be eligible to receive lands transferred pursuant to the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act.

WHEREAS, on May 10, 1985, the Secretary of the Interior established the Joint Tribal Advisory Committee for the purpose of assessing the impacts of the Garrison and Oahe dams on the Three Affiliated Tribes and Standing Rock Sioux Tribe; and

WHEREAS, the Joint Tribal Advisory Committee found that the Three Affiliated Tribes and Standing Rock Sioux Tribe should be adequately compensated for the taking of lands for the site of the Garrison Dam and Reservoir and the Oahe Dam and Reservoir; and

WHEREAS, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act [Title XXXV, Public Law 102-575, 106 Stat. 4600] directs the Secretary of the Army to transfer certain lands that were acquired from the Three Affiliated Tribes by the United States for the Garrison Dam Project and which are within the external boundary of the Fort Berthold Indian Reservation and located at or above contour elevation 1,860 feet mean sea level; and

WHEREAS, the Act also directs the Secretary of the Army to transfer certain lands that were acquired from the Standing Rock Sioux Tribe by the United States for the Oahe Dam Reservoir Project and which are located at or above contour elevation 1620 feet mean sea level; and

WHEREAS, the Act also directs the Secretary of the Army to transfer those federal lands acquired from individual Indian owners by the United States for the Garrison Dam Project and Oahe Dam and Reservoir Project and those lands acquired from non-Indian owners by the United States for the Garrison Dam Project and Oahe Dam and Reservoir Project; and

WHEREAS, it should be explored whether the state of North Dakota is entitled to or eligible to receive lands pursuant to the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study whether the state of North Dakota may be eligible to receive lands transferred pursuant to the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 682

HOUSE CONCURRENT RESOLUTION NO. 3029
(Representatives Kerzman, C. Carlson, Dobrinski, Jacobs)
(Senator Kelsh)

LIVESTOCK INDUSTRY STUDY

A concurrent resolution directing the Legislative Council to study livestock industry concentration and the resulting problems faced by livestock producers.

WHEREAS, in 1991, three corporations slaughtered 80 percent of fed cattle and 70 percent of marketed lamb and sheep; and

WHEREAS, between 1967 and 1991 the livestock producers' share of the retail price of beef and lamb has dropped while the packers' and retailers' shares have increased; and

WHEREAS, the concentration of industry control by a limited number of meatpackers should be reviewed to determine if antitrust laws are being violated; and

WHEREAS, the Attorney General of the United States should enforce the Packers and Stockyards Act to ensure free and fair competition and to prevent monopolistic practices by slaughtering and processing corporations;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study livestock industry concentration and the resulting problems faced by livestock producers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations to the Attorney General of the United States, the Secretary of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 30, 1993

CHAPTER 683

HOUSE CONCURRENT RESOLUTION NO. 3030
(Representatives Dorso, Timm)
(Senator Tennefos)

FEDERAL DRIVER'S LICENSE SANCTIONS OPPOSED

A concurrent resolution opposing the enactment of legislation providing for sanctions dealing with an individual's driver's license as a consequence of the individual's conviction of any drug-related offense.

WHEREAS, the provisions of Section 159 of Title 23 of the United States Code mandates that the United States Secretary of Transportation withhold federal-aid highway funds from a state that fails to enact legislation that provides sanctions dealing with an individual's driver's license upon the individual's conviction of any violation of the federal Controlled Substances Act or any drug-related offense, or provide a written certification that the governor of the state is opposed to the enactment and enforcement of such legislation and that the legislature of the state has adopted a resolution expressing its opposition to such a law; and

WHEREAS, drug abuse and the problems associated with drug abuse continue to be matters of deep national concern, but the sanctioning of an individual driver's license as proposed under Section 159 of Title 23 of the United States Code is considered an inappropriate response to the problem; and

WHEREAS, the sanctioning of an individual's driver's license is a matter best left to the state to ensure compliance with the traffic and motor vehicle laws of the state; and

WHEREAS, the federal government should refrain from mandating policy or legislation of this nature for the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly expresses opposition to the enactment or enforcement of any law mandated under Section 159 of Title 23 of the United States Code, relating to sanctions dealing with an individual's driver's license upon conviction of any violation of the federal Controlled Substances Act or any drug-related offense; and

BE IT FURTHER RESOLVED, that this resolution is intended to satisfy the requirements of subparagraph B of paragraph 3 of subsection a of Section 159 of Title 23 of the United States Code; and

BE IT FURTHER RESOLVED, that the Secretary of State prepare and forward to the Governor an authenticated copy of this resolution; and

BE IT FURTHER RESOLVED, that the Governor is urged to submit to the United States Secretary of Transportation a written certification that the Governor opposes the enactment or enforcement in this state of a federal law requiring sanctions

dealing with an individual's driver's license upon conviction of any violation of the federal Controlled Substances Act or any drug-related offense, a written certification that the Fifty-third Legislative Assembly has adopted this resolution, and the authenticated copy of this resolution.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to each member of the North Dakota Congressional Delegation.

Filed March 26, 1993

CHAPTER 684

HOUSE CONCURRENT RESOLUTION NO. 3031
(Representatives Kerzman, Svedjan)
(Senator Mathern)

MEDICAL ASSISTANCE RECIPIENT REFERRAL

A concurrent resolution encouraging the Department of Human Services to refer medical assistance recipients to public health programs for certain medical services.

WHEREAS, the early and periodic screening, diagnosis, and treatment program screens children for physical and developmental concerns; and

WHEREAS, public health services provide immunizations and other services at costs less than those incurred through private clinics; and

WHEREAS, many medical assistance recipients receive treatment at private clinics even though comparable services are available through public health services; and

WHEREAS, the use of the early and periodic screening, diagnosis, and treatment program and other public health services by medical assistance recipients would decrease the cost of providing quality medical services to medical assistance eligible people;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Department of Human Services is encouraged to refer medical assistance recipients to the early and periodic screening, diagnosis, and treatment program and other public health services for certain medical services; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the executive director of the North Dakota Department of Human Services.

Filed March 24, 1993

CHAPTER 685

HOUSE CONCURRENT RESOLUTION NO. 3033
(Representatives Ring, Boucher, Kretschmar, Svedjan)
(Senators Maxson, Jerome)

INDIAN LAW CENTER SUPPORT

A concurrent resolution commending the University of North Dakota School of Law for its interest in and efforts to establish a center for the study of American Indian law, and to urge the North Dakota Congressional Delegation to lend its support and assistance for the center.

WHEREAS, the University of North Dakota School of Law has recognized the need to provide information and education relating to the courts and other legal matters in the area of American Indian law; and

WHEREAS, the University of North Dakota School of Law is an appropriate entity to assume the duties and responsibilities regarding the control and operation of an American Indian Law Center; and

WHEREAS, it would be in the interest of all North Dakotans to have access to and use of a center for the study of American Indian Law;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly commends the University of North Dakota School of Law for its interest in and efforts to establish a center for the study of American Indian law and urges the North Dakota Congressional Delegation to assist in the establishment of such a center in any way possible; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the University of North Dakota School of Law, the State Board of Higher Education, and each member of the North Dakota Congressional Delegation.

Filed March 12, 1993

CHAPTER 686

HOUSE CONCURRENT RESOLUTION NO. 3034
(Representatives Ness, Cleary, Brodshaug, Nelson, Rydell, Pyle)

RIGHTS OF THE CHILD CONVENTION

A concurrent resolution commending the United Nations for adopting its Convention on the Rights of the Child and urging Congress to consider the issues raised in the convention.

WHEREAS, the state of North Dakota values children as the state's greatest resource and provides for its children through programs for education, health, and welfare; and

WHEREAS, the state of North Dakota maintains and strengthens family and cultural units wherever possible; and

WHEREAS, the state of North Dakota maintains a special relationship with children through foster care programs, residential treatment centers, and the juvenile court system; and

WHEREAS, the criminal code of the state of North Dakota recognizes the vulnerability of children; and

WHEREAS, the state of North Dakota promotes respect for the role of parents, members of the child's extended family, and the child's own community to help direct and guide the child; and

WHEREAS, when the family structure changes, the state of North Dakota requires its courts to act in the best interests of the minor children and to assure their adequate support; and

WHEREAS, the United States government, through Congress and various executive branch agencies, is also committed to policies that enhance the lives of children; and

WHEREAS, the United Nations has recently passed its Convention on the Rights of the Child; and

WHEREAS, the Convention on the Rights of the Child is addressed to national and local governments; and

WHEREAS, the Convention on the Rights of the Child reminds us of our obligations to assure children educational opportunities, to provide the highest available standard of health care, to protect freedoms of expression and association, and to avoid exploitation and abuse;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly reiterates its commitment to our children, commends the United Nations for its Convention on the Rights of the Child,

urges the President of the United States to sign the Convention on the Rights of the Child, and urges the Congress of the United States to ratify the Convention on the Rights of the Child and to continue its efforts to protect and enhance the lives of children; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the State Departments of Health and Consolidated Laboratories, Human Services, and Public Instruction; to the President of the United States; to the secretaries of the United States Departments of Education, Health and Human Services, and Housing and Urban Development; to the chairmen of the United States Senate Committees on Judiciary and Labor and Human Relations and to the United States House of Representatives Committees on Education and Labor, Judiciary, and its Select Committee on Children, Youth, and Families; and to each member of the North Dakota Congressional Delegation.

Filed March 24, 1993

CHAPTER 687

HOUSE CONCURRENT RESOLUTION NO. 3035
(Representatives Belter, Hokana)
(Senators Nelson, Kinnoin)

NATIONAL ENERGY TAX OPPOSITION

A concurrent resolution urging the President and Congress to reject any proposals for a national energy tax and to reject any proposals to increase federal excise taxes on motor fuels for the purposes of deficit reduction.

WHEREAS, the United States Congress and the President are considering an increase in the federal motor fuel tax or enactment of a national energy tax to help reduce the nation's deficit; and

WHEREAS, motor fuel is already one of the most heavily taxed commodities consumers buy; and

WHEREAS, the federal deficit is a national problem that should not be addressed by taxes that apply only to the country's highway users and energy users; and

WHEREAS, the nation's highway transportation system is largely the result of an effective state-federal partnership utilizing federal highway trust fund money from taxes paid by highway users; and

WHEREAS, with growing congestion and heavy replacement costs for roads and bridges, additional highway user taxes for nonhighway purposes could seriously hamper federal and state abilities to meet highway needs; and

WHEREAS, in addition to being inflationary, a large additional motor fuel or national energy tax for deficit reduction would cost thousands of jobs, reduce the gross national product, and reduce federal income tax revenues; and

WHEREAS, increasing the federal motor fuel tax or creating a national energy tax for nonhighway purposes would seriously erode public support for the successful pay-as-you-go state-federal highway program; and

WHEREAS, an increase in the motor fuel tax would fall hardest on the working poor and states like North Dakota that depend heavily on energy; and

WHEREAS, for most people there are no practical alternatives to driving or energy use for business and heating; and

WHEREAS, the public demands that deficit reduction be based on Congress effectively controlling federal spending and acquiring revenue through fair and equitable taxation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly opposes the imposition of any additional federal excise tax on motor fuels or imposition of a national energy tax to help balance the federal budget and urges both the President and Congress to reject any such proposals; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the United States Department of Transportation, the chairman of the United States House of Representatives Committee on Public Works and Transportation, the chairman of the United States Senate Committee on Finance, the presiding officers of the United States Senate and House of Representatives, and to each member of the North Dakota Congressional Delegation.

Filed April 6, 1993

CHAPTER 688

HOUSE CONCURRENT RESOLUTION NO. 3036
(Representatives Porter, Price, Thorpe, Timm, Tollefson, Wentz)

CENTRAL TRADE CORRIDOR

A concurrent resolution expressing support for the development of the Central North American Trade Corridor.

WHEREAS, United States Highway 83 runs from the Canadian border in North Dakota to the southern border of Texas and connects with highly traveled roads in Canada and Mexico; and

WHEREAS, there is good potential for increased trade with Canada and Mexico; and

WHEREAS, a core group recently announced the formation of a proposed Central North American Trade Corridor; and

WHEREAS, the purpose of this group is to promote trade by establishing a recognized trade corridor running along Highway 83; developing an international marketing cooperative; utilizing the Free Trade Agreement; exchanging information about marketing and distribution of goods; and developing the trade corridor infrastructure, including custom-bonded warehouses, foreign trade zones, intermodal and multimodal facilities, and the highway, rail, and air transportation systems; and

WHEREAS, the development of the corridor would provide needed economic development in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly expresses its support for the development of the Central North American Trade Corridor; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to Mr. Steve Peterson, the acting chairman of the group proposing the Central North American Trade Corridor, the President of the United States, the majority leaders of the United States House of Representatives and the United States Senate, each member of the North Dakota Congressional Delegation, the Governors of the affected states, and the Premiers of the provinces of Saskatchewan and Manitoba.

Filed March 24, 1993

CHAPTER 689

HOUSE CONCURRENT RESOLUTION NO. 3039
(Representatives Nicholas, Dobrinski)
(Senators Freborg, Kelsh)

FEDERAL AGRICULTURAL POLICIES URGED

A concurrent resolution urging the Secretary of Agriculture to increase commodity loan rates, implement the Target Option Payment program, appropriately index target prices, increase acceptance rates by the Farmer Owned Reserve, adjust milk marketing orders, study the relationship between support levels, production costs, and farm income, and review current regulations governing commodity support programs.

WHEREAS, North Dakota relies upon agriculture as the base of its economy; and

WHEREAS, real net farm income fell to its lowest level ever in the 1980's which remains inadequate and will continue to fall with the proposed federal BTU tax; and

WHEREAS, since 1980, North Dakota has lost over 7,000 farms and the nation as a whole has lost over 250,000 farms; and

WHEREAS, it is anticipated that North Dakota and the nation will continue to lose farms; and

WHEREAS, the loss of farms has an accompanying loss of farmers and farm income, which in turn has devastated main street businesses and led to the out-migration of our young people; and

WHEREAS, a modest increase of 50 cents per bushel in the price of wheat would add $200 million to farm income; and

WHEREAS, the current farm program has failed to provide family farmers with reasonable economic safety nets; and

WHEREAS, the current farm program is excessively complicated and burdensome for producers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Secretary of Agriculture to use the discretionary authority granted in the Food, Agriculture, Conservation, and Trade Act of 1990 and increase commodity loan rates to the statutory level, implement the Target Option Payment program, index target prices to the rate of inflation, open the Farmer Owned Reserve to accept up to 15,000 bushels per farmer, adjust milk marketing orders to provide orderly market conditions that maintain the purchasing power of dairy farmers and the value of their assets, direct the United States Department of Agriculture to study the relationship between support levels, production costs, and farm income, and review current regulations governing

commodity support programs in order to simplify producer participation and compliance; and

BE IT FURTHER RESOLVED, that the Fifty-third Legislative Assembly invites the Secretary of Agriculture to tour North Dakota and to conduct a hearing on farm policy while in this state; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 6, 1993

CHAPTER 690

HOUSE CONCURRENT RESOLUTION NO. 3041
(Representatives Byerly, Payne)

CAPITAL CONSTRUCTION STUDY

A concurrent resolution directing the Legislative Council to study the short-term and long-term capital construction needs of state agencies and institutions and methods of financing capital construction projects.

WHEREAS, the current 10 percent of one percent of sales tax set aside for capital construction needs appears to be inadequate to finance necessary projects; and

WHEREAS, the State Building Authority may be able to issue debt for revenue bond facilities on the state's colleges and universities at a lower cost; and

WHEREAS, the practice of requiring local shares on state capital construction projects is not uniform; and

WHEREAS, the actual cost of projects when financed by bond issues may or may not be high; and

WHEREAS, the value of the capital construction budget to the Legislative Assembly should be evaluated;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the short-term and long-term capital construction needs of state agencies and institutions and methods used by the state to determine which capital construction projects to undertake, the most appropriate method of finance, and the appropriateness of private or local contributions toward construction costs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 6, 1993

CHAPTER 691

HOUSE CONCURRENT RESOLUTION NO. 3042
(Representative Hagle)

COUNTY CONSOLIDATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating counties.

WHEREAS, legislation consolidating the counties of the state or providing the means for easier optional consolidation of counties has been considered by the Fifty-third Legislative Assembly; and

WHEREAS, it has become apparent that there are potential advantages and disadvantages of consolidating counties by legislation or by local option and thoughtful review is needed to fully examine the legal and administrative issues necessary to make a decision in the best interests of all citizens; and

WHEREAS, study of the consolidation of counties during an interim period with study committee membership of local government representatives will allow adequate time for consideration of the complex issues that must be addressed and allow an opportunity for input from citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of statutorily combining counties or revising provisions for optional consolidation of counties; and

BE IT FURTHER RESOLVED, that the Legislative Council include county government officials as citizen members of the interim committee conducting this study, or in the alternative, that the Legislative Council refer this study to the Advisory Commission on Intergovernmental Relations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 692

HOUSE CONCURRENT RESOLUTION NO. 3043
(Representatives Boucher, Allmaras, Dobrinski, Ring, Wilkie)

MEDICAL ASSISTANCE STUDY

A concurrent resolution directing the Legislative Council to study the medical assistance eligible population in this state to determine if there is a need for a more equitable distribution of medical assistance reimbursement to certain providers.

WHEREAS, there are approximately 52,500 residents of the state who are eligible for medical assistance benefits for health care services; and

WHEREAS, some health care providers have an excessive medical assistance clientele due to a heavy concentration of medical assistance eligible residents in the area of the state in which those providers practice; and

WHEREAS, medical assistance reimbursement rates are lower than other health care insurance reimbursement rates; and

WHEREAS, a review of the distribution of medical assistance eligible persons in the state and of whether some health care providers are serving a disproportionate number of medical assistance clientele would uncover inequities that exist in the medical assistance system; and

WHEREAS, if inequities exist, a different reimbursement method might be considered to provide reimbursement at increased rates for providers serving a larger ratio of medical assistance recipients;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the medical assistance eligible population in this state to determine if there is a need for a more equitable distribution of medical assistance reimbursement to certain providers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 6, 1993

CHAPTER 693

HOUSE CONCURRENT RESOLUTION NO. 3044
(Representative Sveen)

TEACHER SALARY AND BENEFIT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of the legislative assembly establishing teacher salaries and benefits.

WHEREAS, setting the appropriate level of teacher salaries and benefits has been a concern of teachers, school board members, and the citizens of this state; and

WHEREAS, the negotiation process and setting of teacher salaries and benefits can lead to discontent on the part of teachers, school board members, and taxpayers of this state; and

WHEREAS, it would best serve the interests of everyone concerned if the time, energy, and resources devoted to teacher salaries and benefits were applied to the education of our children; and

WHEREAS, the diversity of salaries and benefits to teachers among the school districts of this state may lead to inequities resulting in differentials in educational opportunities for students;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of the legislative assembly establishing teacher salaries and benefits; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 694

HOUSE CONCURRENT RESOLUTION NO. 3045
(Representatives Huether, Belter, Timm)
(Senators Mushik, Tallackson, Urlacher)

TAX STRUCTURE STUDY

A concurrent resolution directing the Legislative Council to study the tax structure, particularly the balance among the various tax systems in North Dakota.

WHEREAS, uncertainty exists concerning the proper balance among the various tax systems in North Dakota, including property taxes, corporate, individual, trust, and estate income taxes, and sales, use, and excise taxes; and

WHEREAS, variation exists between statistics and studies that compare North Dakota's tax rates to the rates of other states; and

WHEREAS, recent interest in legislation and initiative and referendum issues dealing with taxation issues at the state and local level indicate that thorough study of tax issues is required; and

WHEREAS, there is a need to review the means of raising revenue required to provide services at the state and local levels and to try to find efficient and effective ways to equitably distribute the tax burden;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the tax structure, particularly the balance among the various tax systems in North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 695

HOUSE CONCURRENT RESOLUTION NO. 3046
(Representatives Rydell, Kerzman, Grumbo, Hagle)
(Senators DeMers, Goetz)

STATEWIDE TRAUMA CARE STUDY

A concurrent resolution directing the Legislative Council to study the need for and development of a statewide trauma care system in this state.

WHEREAS, it is a legislative responsibility to review the need for new laws to ensure that serious problems that affect the health and safety of citizens are addressed; and

WHEREAS, citizens of this state are at risk of death or serious injury due to trauma incidents; and

WHEREAS, trauma is the leading cause of death for North Dakotans under the age of 45; and

WHEREAS, for each trauma death there are two cases of permanent disability; and

WHEREAS, studies reported by the National Highway Traffic Safety Administration and others have shown dramatic reductions in preventable trauma deaths in areas where trauma systems have been implemented on an organized basis; and

WHEREAS, the United States Congress recognized the need for states to take action to develop organized trauma systems, and passed the national Trauma Care Systems Planning and Development Act in 1990, and provided funding in fiscal year 1992; and

WHEREAS, North Dakota was one of 23 states selected to be awarded Trauma Care Act funding in October 1992 to develop a statewide trauma system plan; and

WHEREAS, because trauma primarily affects people at or near the beginning of their most productive work years, its cost measured in lost productivity from both disability and death is extremely high, and in North Dakota is primarily due to motor vehicle crashes and other accidents; and

WHEREAS, the emergency medical services system in this state is predominantly made up of volunteer emergency medical technician personnel who support the need for a statewide trauma care system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the present status of trauma care in this and other states, and the desirability of adopting a statewide Trauma Systems Act; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 696

HOUSE CONCURRENT RESOLUTION NO. 3047
(Representative Porter)
(Senators DeMers, Evanson)

EMPLOYMENT OF MINORS STUDY

A concurrent resolution directing the Legislative Council to study issues related to the employment of minors, including the need for employment, the academic and financial impact of employment, and safety requirements in the workplace.

WHEREAS, teenagers frequently combine employment during the school year with their academic responsibilities; and

WHEREAS, the reasons for teenagers to combine employment with their academic responsibilities can include the need to assist their families, acquire funds to pay the costs of higher education, and obtain spending money; and

WHEREAS, the desire of teenagers to combine employment with their academic activities can impact their academic performance; and

WHEREAS, the part-time employment of teenagers raises other concerns, such as the safety of their work environment;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the employment of minors, including the need for employment, the academic and financial impact of such employment, and the safety requirements for minors in the workplace; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 697

HOUSE CONCURRENT RESOLUTION NO. 3049
(Representatives Rennerfeldt, Brown, Hokana)
(Senators Nelson, Robinson)

PURPLE LOOSESTRIFE STUDY

A concurrent resolution directing the Legislative Council to study noxious weed laws to determine the feasibility and desirability of identifying purple loosestrife as a noxious weed and instituting appropriate methods of control or eradication.

WHEREAS, purple loosestrife is a plant that thrives in wetlands; and

WHEREAS, one purple loosestrife stalk can create up to 300,000 seeds; and

WHEREAS, purple loosestrife puts down strong roots in damp ditches and wetlands, competes with cattails, mints, bullrushes, grass, and lilypads, and completely changes the aquatic environment; and

WHEREAS, purple loosestrife is to wetlands what leafy spurge is to pasturelands; and

WHEREAS, Minnesota has classified purple loosestrife as a noxious weed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study noxious weed laws to determine the feasibility and desirability of identifying purple loosestrife as a noxious weed and instituting appropriate methods of control or eradication;

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 698

HOUSE CONCURRENT RESOLUTION NO. 3050
(Representatives Tollefson, Hanson)

HUNTING STUDY

A concurrent resolution directing the Legislative Council to study the state's hunting laws to determine changes that can be made to improve the relationship between hunters and private landowners, including the issuance of gratis permits.

WHEREAS, most North Dakota land is privately owned; and

WHEREAS, there were over 275,000 resident hunting licenses and over 25,000 nonresident hunting licenses issued in 1991; and

WHEREAS, hunting opportunities in this state are an economic and recreational benefit to the people of this state and other states; and

WHEREAS, a good working relationship based on a common understanding of the rights of both the hunter and private landowner is vital to the future of hunting in the state; and

WHEREAS, public accessibility to private lands for hunting purposes must be insured; and

WHEREAS, there may be incentives that can be made available to private landowners to permit public hunting on private lands;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's hunting laws to determine changes that can be made to improve the relationship between hunters and private landowners, including the issuance of gratis permits; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 6, 1993

CHAPTER 699

HOUSE CONCURRENT RESOLUTION NO. 3051
(Representatives Clayburgh, C. Carlson, Gates, Glassheim, Klein, Maragos, D. Olsen, Poolman, Porter, Price, Ring, Shide, St. Aubyn, Svedjan, Thorpe, Timm, Tollefson, Wentz)
(Senators DeMers, Graba, Holmberg, Krebsbach, Maxson, Mutch, Redlin, Schoenwald, W. Stenehjem)
(Approved by the Delayed Bills Committee)

AIR FORCE BASE SUPPORT

A concurrent resolution expressing support for the efforts to continue operation of the Minot Air Force Base and Grand Forks Air Force Base.

WHEREAS, the Grand Forks Air Force Base is located 16 miles west of Grand Forks and the Minot Air Force Base is located 13 miles north of Minot; and

WHEREAS, the major tenants of the Grand Forks Air Force Base are the 319th Bomb Wing including 17 B-1B bombers, the 905th AREFS including 13 KC-135R tankers and the 321st Missile Wing including 150 Minuteman III missiles; and

WHEREAS, the major tenants of the Minot Air Force Base are the 5th Bomb Wing including 16 B-52H bombers, the 906th AREFS including 18 KC-135 tankers and the 91st Missile Wing including 150 Minuteman III missiles; and

WHEREAS, the combined employment of the Grand Forks and Minot Air Force bases includes approximately 9,500 military and 1,200 civilian employees; and

WHEREAS, the Grand Forks and Minot Air Force bases have been an active part of the state's social, economic, and historical background for over 30 years; and

WHEREAS, the combined economic impact of the Grand Forks and Minot Air Force bases is over $400 million annually to the state; and

WHEREAS, closure of either one of the Air Force bases would have an extremely detrimental economic impact on the city, county, and state structure of government; and

WHEREAS, the location of the Grand Forks and Minot Air Force bases render them essential to the defense of the United States; and

WHEREAS, the communities of Grand Forks and Minot have been actively engaged in promoting a continued presence by the Air Force at the Grand Forks and Minot Air Force bases;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly supports the efforts of many individuals and groups to ensure the continued operation of the Grand Forks Air Force Base and Minot Air Force Base;

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Department of Defense, Joint Chiefs of Staff, Commander - Air Combat Command, Commander - Air Mobility Command, mayors of Grand Forks and Minot, and to each member of the North Dakota Congressional Delegation.

Filed February 18, 1993

CHAPTER 700

HOUSE CONCURRENT RESOLUTION NO. 3052
(Representatives Hokana, Timm)
(Senator Dotzenrod)

INDIVIDUAL INCOME TAX STUDY

A concurrent resolution directing the Legislative Council to study the imposition of state income taxes for individuals, estates, and trusts.

WHEREAS, since 1981 North Dakota has had two separate methods of determining income tax liability for individuals, estates, and trusts; and

WHEREAS, the existence of two separate methods of imposing income taxes makes it difficult for citizens to understand the state's income tax laws and interrelationships; and

WHEREAS, thorough study of North Dakota income tax laws is required to determine whether it is possible to create a unified method of determining individual, estate, and trust income taxes which is simple to administer and understand, contains a minimal number of exemptions and credits, and is approximately revenue neutral;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the imposition of income taxes for individuals, estates, and trusts with emphasis on determining a unified method of determining individual, estate, and trust income taxes which is simple to administer and understand, contains a minimal number of exemptions and credits, and is approximately revenue neutral; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 701

HOUSE CONCURRENT RESOLUTION NO. 3053
(Representatives Hokana, Timm)
(Senator Dotzenrod)

SALES AND USE TAX STUDY

A concurrent resolution directing the Legislative Council to study the imposition and administration of sales, use, motor vehicle excise, and aircraft excise taxes.

WHEREAS, sales, use, motor vehicle excise, and aircraft excise taxes constitute major revenue sources for the state and local governments; and

WHEREAS, the fact that sales taxes are a substantial tax obligation requires the Legislative Assembly to scrutinize imposition of the tax to assure that it is fairly apportioned among citizens; and

WHEREAS, policy decisions concerning sales, use, and excise tax rates and exemptions impact economic development, tourism, and all other aspects of North Dakota's economy; and

WHEREAS, the sales tax base in this state should be compared to the sales tax base in other jurisdictions on a frequent basis to allow informed decisions on whether there is a need for uniformity across jurisdictional lines;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study imposition and administration of sales, use, motor vehicle excise, and aircraft excise taxes; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 702

HOUSE CONCURRENT RESOLUTION NO. 3054
(Representatives Aarsvold, Bateman, Kerzman)
(Senators Redlin, Thane, Urlacher)

RURAL WATER SUPPLY STUDY

A concurrent resolution directing the Legislative Council to study the supplying of water to rural areas and small towns.

WHEREAS, the means to supply water to rural areas and small towns in this state is a critical issue; and

WHEREAS, funding by the Farmers Home Administration has been available in the past for water supply organizations but it appears the role of the Farmers Home Administration will diminish so it is necessary to develop plans to restructure financing for nonprofit rural water supply organizations and to examine financing options, including tax-exempt financing, which will be compatible with federal law; and

WHEREAS, it is necessary to examine the need for improvement, renovation, and expansion of existing water service systems and to assure that rural water supply organizations are able to comply with increasing regulation, make systems more viable, expand to include unserviced areas, and assure that rural water rates remain stable;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the supplying of water to rural areas and small towns; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 703

HOUSE CONCURRENT RESOLUTION NO. 3055
(Representatives Clayburgh, Gerntholz, Howard, Kroeber)
(Senators Lindgren, Nething)

EMERGENCY MANAGEMENT STUDY

A concurrent resolution directing the Legislative Council to study the structure and organization of the Division of Emergency Management and local emergency management organizations.

WHEREAS, the possibility of combining the Division of Emergency Management into another existing state agency and the combining of local emergency management organizations into the county sheriffs' offices requires detailed study of numerous issues; and

WHEREAS, study of consolidation should include the review of similar functions and duties being performed by other state agencies and local governmental entities in an attempt to eliminate duplication and increase the efficiency of the services provided; and

WHEREAS, study of the consolidation of the Division of Emergency Management and local emergency management organizations with other local governmental entities should include review and evaluation of any economic, professional, training, emergency preparedness, and other potential benefits as well as a thorough evaluation of impacts on local units of government;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the structure and organization of the Division of Emergency Management and local emergency management organizations, including the feasibility of consolidation of the Division of Emergency Management with an appropriate state agency and the feasibility of consolidation of local emergency management organizations with other local governmental units, and that consideration be given to whether services would be enhanced and greater efficiencies would be achieved through these consolidations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 704

HOUSE CONCURRENT RESOLUTION NO. 3056
(Representatives Austin, Brodshaug, A. Carlson, Holm, Svedjan, Wentz)

CHILD CARE AND INJURY PREVENTION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing a funding program for child care licensing reforms, child abuse prevention, and child injury prevention through the purchase of personalized motor vehicle license plates.

WHEREAS, the health and safety of children in this state is of utmost importance; and

WHEREAS, injury prevention programs dealing with water safety, fire safety, firearms safety, bicycle safety, playground safety, in-home safety, toxic safety, vehicle restraints, blood poisoning, and sudden infant death syndrome may not be funded at a level to achieve optimum results; and

WHEREAS, other states have implemented programs to support child care licensing reforms, child abuse prevention, and child injury prevention programs in new and innovative ways; and

WHEREAS, California has instituted a program called "Kids License Plates" that results in a portion of the moneys received from personalized license plates that have symbols representing a heart shape, a five-point star, a child's handprint, and a plus sign dedicated for child care reforms; and

WHEREAS, Section 11 of Article X of the Constitution of North Dakota provides that motor vehicle licensing and registration fees be placed in the highway tax distribution fund for public highway construction purposes; and

WHEREAS, any proposal to change the distribution of motor vehicle license and registration fees requires a review of constitutional requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of implementing a funding program for child care licensing reforms, child abuse prevention, and child injury prevention through the purchase of personalized motor vehicle license plates; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 705

HOUSE CONCURRENT RESOLUTION NO. 3057
(Representatives Brodshaug, Dorso, Rydell)

YOUTH FOSTER CARE AND COURT STUDY

A concurrent resolution directing the Legislative Council to study the problems and resources available to meet the needs of North Dakota youth age 17 through 21 who are released from the state foster care or court system.

WHEREAS, while the potential earning power of a youth about to become a part of the work force is a tremendous asset, the potential costs of losing a youth to the correction system may be a tremendous liability; and

WHEREAS, young people age 17 through 21 who are released from the state's foster care system may become parents before they become self-sufficient members of the work force; and

WHEREAS, while most families continue to nourish their children throughout the years of their education and into maturity, some find it difficult to break an intergenerational proclivity to depend upon state support systems; and

WHEREAS, youth with the ability and the will to become economically contributing citizens of North Dakota should not be deprived of the opportunity to do so; and

WHEREAS, the United States Department of Health and Human Services has indicated its willingness to develop pilot projects offering transitional living services for youth age 17 through 21;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems of and resources available to meet the needs of North Dakota youth age 17 through 21 who are released from the foster care or court system; and

BE IT FURTHER RESOLVED, that the Department of Human Services, the Division of Juvenile Services, the Department of Public Instruction, and the Board of Higher Education provide such assistance and information to the Legislative Council as it may request in conducting the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 706

HOUSE CONCURRENT RESOLUTION NO. 3058
(Representatives Boucher, Bodine, Price, Rydell)
(Senators Holmberg, O'Connell)

BLIND SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the provision of services to blind and visually impaired children and adults.

WHEREAS, the state has a significant interest in ensuring that blind and visually impaired children and adults develop the ability to function as independently as possible; and

WHEREAS, children and adults who are blind or visually impaired require a continuum of educational, rehabilitative, and other services or assistance if they are to function independently; and

WHEREAS, it is the responsibility of the state to ensure that children and adults who are blind or visually impaired receive an appropriate continuum of services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the provision of services to blind and visually impaired children and adults, using the expertise of consumers or citizen members; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 707

HOUSE CONCURRENT RESOLUTION NO. 3059
(Representatives Maragos, Porter)

STATE AND LOCAL HOUSING AUTHORITIES STUDY

A concurrent resolution directing the Legislative Council to study state laws affecting the relationship between local housing authorities and the North Dakota Housing Finance Agency.

WHEREAS, providing dwelling accommodations for persons of low income in all areas of the state is a concern of the Legislative Assembly; and

WHEREAS, the Fifty-third Legislative Assembly considered and did not fully resolve the issues involved in state and local administration of federal housing programs; and

WHEREAS, careful examination of issues raised in consideration of the proper level of government for administration of certificates and vouchers under federal housing programs would best be accomplished by consideration during an interim study;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study state laws affecting the relationship between local housing authorities and the North Dakota Housing Finance Agency, with emphasis on determining the proper level of government for administration of certificates and vouchers under federal housing programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 708

HOUSE CONCURRENT RESOLUTION NO. 3060
(Representatives Maragos, Gulleson)

POLITICAL SUBDIVISION INVESTMENT STUDY

A concurrent resolution directing the Legislative Council to study authorized investments of political subdivision funds.

WHEREAS, state laws on depositories of public funds have been in place for 70 years or more and during that time the investment world has changed substantially; and

WHEREAS, the limitations of state law on depositories for funds of political subdivisions severely restrict the opportunity of political subdivisions to receive the highest safe return on investments; and

WHEREAS, determination of the current status of state law regarding depositories for funds of political subdivisions and analysis of the feasibility and desirability of allowing political subdivisions to make alternate investments that are reasonably free of risk could allow a much more beneficial use of public funds;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study deposit and investment restrictions in state law regarding funds of political subdivisions to determine the feasibility and desirability of allowing additional investments of political subdivision funds; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 709

HOUSE CONCURRENT RESOLUTION NO. 3061
(Representatives Kretschmar, Kroeber)

ANNUAL LEGISLATIVE SESSION STUDY

A concurrent resolution directing the Legislative Council to study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1995 and 1996.

WHEREAS, in 1976 the Constitution of North Dakota was amended to allow the Legislative Assembly to meet in regular session for 80 natural days and to provide that days spent in regular session need not be consecutive; and

WHEREAS, after seven sessions of operating under the 80 natural day provision the Legislative Assembly requested the Legislative Council to study the legislative process during the 1989-90 interim, with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session; and

WHEREAS, during that study information was received on the South Dakota Legislature, which meets for a 40-day session in odd-numbered years and a 35-day session in even-numbered years, and the Wyoming Legislature, which meets for a 40-day general session in odd-numbered years and 20-day budget session in even-numbered years; and

WHEREAS, the complexities of governing the state require that the Legislative Assembly meet in annual session beginning in 1995 and 1996; and

WHEREAS, further legislative study is needed for the development of a specific procedure for an odd-numbered year session and an even-numbered year session;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1995 and 1996; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 710

HOUSE CONCURRENT RESOLUTION NO. 3063
(Representative Kretschmar)

FORESIGHT STUDY

A concurrent resolution directing the Legislative Council to study alternatives for establishing mechanisms for facilitating long-term policy development and other foresight processes in North Dakota state and local government.

WHEREAS, the present economic and social transition created by technological change and global competition can provide North Dakota with opportunities to pursue a prosperous future with clarity of purpose; and

WHEREAS, in order to identify and take advantage of these opportunities, there is a need for foresight processes that permit long-term or "posterity" thinking by leaders and citizens to position North Dakota for anticipating and responding to issues and problems with forward-looking perspectives; and

WHEREAS, this foresight capacity can assist North Dakota leaders in better anticipating changes in the state's social, economic, and physical environment; help North Dakota leaders and managers make more informed and wiser decisions through careful deliberation; and enhance communication and cooperation among the three branches of state government, local government, and the public; and

WHEREAS, this foresight capacity may include processes and activities involved in public policy issue scanning, future research and analysis, long-range planning, and public participation and consensus building; and

WHEREAS, several states have taken diverse approaches in creating mechanisms for looking at government decisionmaking from a long-term perspective as a means for taking advantage of new opportunities, avoiding problems, and providing for continuity in public policy; and

WHEREAS, these efforts by other states include the creation of a long-term policy research center in Kentucky that serves both the executive and legislative branches of state government, and efforts such as the Oregon Benchmarks Process, the Minnesota Milestones Process, and Utah's Tomorrow Strategic Planning that involve the identification of measurable benchmarks or goals for the state's future; and

WHEREAS, the efforts of these states reflect the recognition of foresight processes as an important tool for public policy making which can serve to improve the way policy decisions are formulated and assessed by providing decisionmakers with a fuller background and broader context that considers the long-term implications of policies and critical emerging trends and issues that are likely to have a significant impact on the state and its citizens in the future;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study alternatives for establishing mechanisms for facilitating long-term policy development and other foresight processes in North Dakota state and local government; and

BE IT FURTHER RESOLVED, that the Legislative Council consider appointing citizen members to the interim committee that is assigned this study, including representatives of local government, the executive branch, higher education, the nonprofit sector, and the private sector to assist in generating ideas for incorporating foresight into decisionmaking; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 711

HOUSE CONCURRENT RESOLUTION NO. 3064
(Representative Kretschmar)

BOARD, COUNCIL, AND COMMISSION STUDY

A concurrent resolution directing the Legislative Council to study the membership, duties, and responsibilities of all statutory boards, councils, committees, and commissions.

WHEREAS, there are over 100 statutorily created boards, councils, committees, and commissions; and

WHEREAS, these boards, councils, committees, and commissions have varying requirements for membership selection and appointment, composition, and authority; and

WHEREAS, the duties and responsibilities of these various boards and commissions range from advisory to regulatory; and

WHEREAS, all boards, councils, committees, and commissions, whether merely advisory in nature or whether engaged in active regulation of any activity, should be responsive and receptive to the needs of the public;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the membership, duties, and responsibilities of all boards, committees, commissions, and councils. The study should include consideration of whether any of the boards, councils, committees, and commissions have overlapping powers and duties, whether any boards, councils, committees, and commissions should be eliminated or consolidated, whether each board, council, committee, and commission presently performs the functions for which it was originally created, and whether the membership of each board, council, committee, and commission is responsive to the people of the state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 712

HOUSE CONCURRENT RESOLUTION NO. 3065
(Representative Kretschmar)

REVENUE FORECASTING STUDY

A concurrent resolution directing the Legislative Council to study alternative administrative structures for forecasting state revenues.

WHEREAS, accurate forecasts of state revenues are of critical importance to a citizen legislature that must depend on its fiscal information to be valid for an extended period of time; and

WHEREAS, the Fifty-third Legislative Assembly considered, but did not adopt, legislation that would have established a revenue forecasting conference to determine official revenue forecasts for the state; and

WHEREAS, improved forecasting of revenues for the state would be a substantial benefit to the state and its political subdivisions and citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study alternative administrative structures for forecasting state revenues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 30, 1993

CHAPTER 713

HOUSE CONCURRENT RESOLUTION NO. 3066
(Representative Kretschmar)

AIRCRAFT PRODUCTS LIABILITY STUDY

A concurrent resolution directing the Legislative Council to study products liability statutes as they relate to the aircraft industry.

WHEREAS, in 1979 this country's aviation industry manufactured and sold more than 17,000 aircraft but in 1992 the industry manufactured only 899 aircraft; and

WHEREAS, this decline in the aircraft industry has been attributed to product liability claims against aircraft manufacturers in the United States; and

WHEREAS, revision in product liability laws may encourage the return of aircraft manufacturers to the United States, and possibly to North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study products liability statutes as they relate to the aircraft industry, with emphasis on improving the business climate in this state for the manufacture of small aircraft; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 714

HOUSE CONCURRENT RESOLUTION NO. 3069
(Representatives Ring, Maragos)
(Senators Maxson, W. Stenehjem)

CRIMINAL LAWS STUDY

A concurrent resolution directing the Legislative Council to study the substantive criminal laws of North Dakota.

WHEREAS, the criminal justice provisions and statutes of the state may not be adequately serving the needs of society in the areas of protection, the rehabilitation of convicted persons, or the prevention of criminal activity; and

WHEREAS, disparities and inequities in penalties, sentences, and sentencing procedures may cause disenchantment with the state's criminal justice system; and

WHEREAS, the system of criminal justice must be viewed as a comprehensive whole embracing every phase from crime prevention through correction and rehabilitation; and

WHEREAS, a revision of the substantive criminal laws of this state, with emphasis on classification of penalties, elimination of criminal provisions having little or no social utility, and consideration of substituting civil for criminal penalties when feasible, would be a large step toward maintaining a modern, comprehensive criminal justice system for the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the substantive criminal laws of the state, or so much thereof as may reasonably be reviewed during the 1993-94 interim, with special emphasis on the penalty structure established by present law, including the classification of penalties and the elimination of duplicate penalties. The Legislative Council shall also study the feasibility and desirability of whether a complete revision of the criminal code is necessary to keep the criminal code current with the many changes taking place in the criminal justice system; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 24, 1993

CHAPTER 715

HOUSE CONCURRENT RESOLUTION NO. 3072
(Representatives Kretschmar, Ring)
(Approved by the Delayed Bills Committee)

INDIAN GAMING - CHARITABLE GAMING STUDY

A concurrent resolution directing the Legislative Council to study charitable gaming laws and rules and the effects of Indian gaming on charitable gaming in this state.

WHEREAS, The growth of charitable gaming as an industry in this state requires the attention of the Legislative Assembly in each legislative session; and

WHEREAS, a thorough review of rules and laws governing charitable gaming by an interim committee is required to assure that rules and laws regarding taxes, enforcement, and limitations on charitable gaming are adequate to govern charitable gaming under current conditions; and

WHEREAS, the federal Indian Gaming Regulatory Act has resulted in an increase in the types of gaming permitted on tribal lands in this state; and

WHEREAS, the impact of Indian gaming operations on the charitable gaming industry is unknown;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, and limitations on charitable gaming are adequate and appropriate and the effects of Indian gaming on charitable gaming in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 28, 1993

CHAPTER 716

HOUSE CONCURRENT RESOLUTION NO. 3074
(Employment Committee)
(Approved by the Delayed Bills Committee)

POSTSESSION EMPLOYEES

A concurrent resolution authorizing the retention of certain employees of the House and Senate to allow for the completion of legislative work after the close of the session.

WHEREAS, it is necessary to complete and close work of the regular session of the Fifty-third Legislative Assembly; and

WHEREAS, certain legislative employees should be retained to complete and close this work;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following named positions may be retained by the House of Representatives and the Senate after the adjournment of the regular session:

HOUSE POSITIONS

Chief Clerk
Assistant Chief Clerk
Desk Reporter
Bill Clerk
Sergeant-at-Arms
Assistant Sergeant-at-Arms
Chief Page and Bill Book Clerk
Assistant Chief Page and Bill Room Clerk
Chief Stenographer and Payroll Clerk
Bill and Journal Room Clerk
Chief Committee Clerk
Appropriations Committee Clerk
Assistant Appropriations Committee Clerks
Secretary to Speaker
Secretary to Majority Leader
Staff Assistant to Majority Leader
Secretary to Minority Leader
Staff Assistant to Minority Leader
Desk Pages
Chief Telephone Attendant

SENATE POSITIONS

Secretary of the Senate
Assistant Secretary of the Senate
Desk Reporter
Bill Clerk

Sergeant-at-Arms
Deputy Sergeant-at-Arms
Chief Page and Bill Book Clerk
Pages
Chief Stenographer and Payroll Clerk
Stenographer
Chief Committee Clerk
Appropriations Committee Clerk
Industry, Business and Labor Committee Clerk
Education Committee Clerk
Judiciary Committee Clerk
Secretary to Majority Leader
Staff Assistant to Majority Leader
Secretary to Minority Leader
Staff Assistant to Minority Leader
Chief Bill and Journal Room Clerk
Journal Room Clerk
Supply Room Coordinator

BE IT FURTHER RESOLVED, that the above-listed House and Senate employees shall serve at the request of, and under the supervision of, the Chief Clerk of the House and the Secretary of the Senate, and that all of the listed employees, including the Chief Clerk of the House and the Secretary of the Senate, may not be employed for more than 200 days in the aggregate. The Chief Clerk of the House and the Secretary of the Senate shall assign work among the available House and Senate employees, respectively, in the appropriate manner. The Chief Clerk of the House and the Secretary of the Senate shall coordinate the work assignments in their respective houses in such a manner that the total number of days utilized does not exceed the aggregate limit on days authorized by this resolution. The Chief Clerk of the House and the Secretary of the Senate shall minimize the days spent in completion of legislative business to the extent consistent with the completion; and

BE IT FURTHER RESOLVED, that the employees in the the above-named positions be paid their regular rates of pay as specified in Senate Concurrent Resolution No. 4019 for work pursuant to this resolution, and all of these sums are to be paid out of the appropriation to the Fifty-third and Fifty-fourth Legislative Assemblies, and after completion of the work, provided that each above-listed employee must be paid on a pro rata basis if the total number of days exceeds the aggregate limit.

Filed April 27, 1993

SENATE CONCURRENT RESOLUTIONS

CHAPTER 717

SENATE CONCURRENT RESOLUTION NO. 4001
(Legislative Council)
(Interim Budget Committee on Government Administration)

STATE EMPLOYEES

A concurrent resolution expressing legislative support for the corps of North Dakota state employees and expressing legislative purpose that the recruitment, training, and retention of valuable state employees be given priority by each branch of state government.

WHEREAS, the value of state employees is not always recognized by the public they serve; and

WHEREAS, the effectiveness of state government depends upon the quality of work performed by state employees; and

WHEREAS, the services provided by North Dakota state employees are among the finest in the nation, with many of the individual services and products receiving national recognition; and

WHEREAS, state employees are a very valuable resource available to our state government institutions and agencies; and

WHEREAS, the Legislative Assembly, as the state government's board of directors, needs to formally recognize the value of state employees to the performance of vital governmental services that it mandates; and

WHEREAS, the continued recruitment and retention of a skilled group of state employees is vital to the continued effective performance of state government;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly gives special recognition to the state employees of the state of North Dakota and expresses its thanks to them for carrying out legislative policy with such distinction; and

BE IT FURTHER RESOLVED, that the Legislative Assembly urges each branch of state government to plan and budget for adequate training and career development for state employees which will improve the recruitment and retention of valuable state employees, and the Legislative Assembly expresses and will give its support for such planning and budgeting, and will give priority to adequate training and career development for state employees in its development and passage of legislation in this and future legislative sessions; and

BE IT FURTHER RESOLVED, that the Secretary of State deliver copies of this resolution to the Governor and to the Chief Justice of the North Dakota Supreme Court.

Filed March 19, 1993

CHAPTER 718

SENATE CONCURRENT RESOLUTION NO. 4002
(Legislative Council)
(Interim Budget Committee on Government Services)

CONTINUUM OF SERVICES STUDY

A concurrent resolution directing the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital, expanded community services, and the development of partnerships between the public and private sectors.

WHEREAS, pursuant to North Dakota Century Code Section 50-06-06.5, which was a recommendation resulting from a 1985-86 study by the Legislative Council's interim Budget Committee on Human Services, the Department of Human Services has developed a plan for an integrated, multidisciplinary continuum of service for mentally ill individuals; and

WHEREAS, during the 1987-88 interim the Legislative Council's Budget Committee on Human Services studied the role and function of the State Hospital in the provision of services to the mentally ill and chemically dependent, and during the 1989-90 interim the Legislative Council's Budget Committee on Human Services reviewed the plan for expanding community services for the chronically mentally ill and chemically dependent and the future role of the State Hospital; and

WHEREAS, during the 1991-92 interim the Legislative Council's Budget Committee on Government Services, in studying the feasibility and desirability of the Department of Human Services contracting with the private sector for the treatment of alcohol and drug dependent persons, determine that the department and the private sector are interested in cooperating to provide chemical dependency treatment services; and

WHEREAS, the committee was informed that the department's 1993-95 budget request for community services for the mentally ill may not include sufficient funds to meet all the needs identified by the regional human service centers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council monitor the continued development of a continuum of services for the mentally ill and chemically dependent, including changes in the role of the State Hospital and expanded community services, and receive status reports from the Department of Human Services and private providers on the development of a partnership between the public and private sectors for providing alcohol and drug abuse services throughout the state.

Filed March 10, 1993

CHAPTER 719

SENATE CONCURRENT RESOLUTION NO. 4003
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICES TOTAL QUALITY MANAGEMENT

A concurrent resolution encouraging the Department of Human Services to continue the development of a total quality management initiative; and directing the Legislative Council to monitor the implementation of the total quality management initiative.

WHEREAS, the Legislative Council's Budget Committee on Human Services during the 1991-92 interim conducted a study of the administrative structure of the Department of Human Services; and

WHEREAS, the committee engaged a consultant to determine the status of the recommendations by the 1987 Legislative Assembly and the consultant made additional recommendations to improve the administrative structure and processes of the department, and determined that the department's commitment to total quality management could assist in addressing the recommendations; and

WHEREAS, total quality management is a system of ideas that W. Edwards Demming taught Japanese corporations in the 1950s and which has been developing in the United States ever since; and

WHEREAS, Dr. Demming teaches organizations to treat the people they serve as important customers, to place customer satisfaction as an organization's primary goal, to base decisions on carefully gathered statistical data about all the facts of the operation, and to bring labor and management together and keep them working closely together as one of the best ways to get the job done; and

WHEREAS, total quality management is designed to establish a secure work environment so that everyone may work effectively, break down the barriers between departments, institute a program of education and self-improvement, cease dependence on mass inspection, and require top management to drive the transformation; and

WHEREAS, total quality management has been implemented successfully in several United States companies and state and local governmental units; and

WHEREAS, legislative involvement and input at appropriate times in agencies' implementation of total quality management will assist state agencies in being responsive to legislative intent; and

WHEREAS, the Governor by executive order has established the North Dakota Quality Coordination Committee to develop a strategic plan to coordinate total quality management implementation in state government; and

WHEREAS, North Dakota state employees are currently valued for their high quality work and their willingness to strive always to do better; and total quality management provides the philosophical basis and the tools for excellence; and

WHEREAS, total quality management concepts include:

1. A recognition that to achieve success, high levels of management must be committed to the total quality management concepts and must conduct a systematic review of the implementation progress;

2. A focus on service recipients and the citizens of the state of North Dakota by:

   a. Identifying and prioritizing service needs,

   b. Placing a high priority on satisfying priority service needs,

   c. Constantly striving for improvement in quality and delivery of services, and

   d. Striving to efficiently deliver services necessary to meet client needs;

3. Teamwork and the encouragement of employees to:

   a. Use teams to recommend changes, allowing input from affected units to ensure coordination in the provision of quality services,

   b. Provide training to enhance employee skills,

   c. Stimulate employees by reward and recognition to provide quality service, and

   d. Provide recognition of superior employee performance in quality improvement;

4. Communication and coordination in the provision of services by:

   a. Communicating quality goals to the citizens and the Legislative Assembly of the state of North Dakota,

   b. Striving to provide services more efficiently to reduce costs of service,

   c. Recognizing that poor quality services result in costs to the state, many of which costs may not be easily identified or may appear in future years, and

   d. Encouraging cooperation within a governmental agency and with local political subdivisions and providers of service; and

5. The necessity of long-term strategic planning to identify long-term needs of the citizens of North Dakota and to develop goals to meet those needs; and

WHEREAS, the Department of Human Services initiated the implementation of total quality management concepts during the 1991-93 biennium which are expected to:

1. Mold the department into a cohesive organizational structure with a common mission and purpose;

2. Provide employee incentives to reward quality performance;

3. Emphasize strategic planning to place a greater emphasis on needs assessment;

4. Improve coordination and consultation as a result of increased communication among departmental divisions;

5. Develop an internal decisionmaking process adhering to the mission of the department and focusing on the needs of North Dakota citizens; and

6. Establish a mechanism for anticipating future needs and conceptualizing potential approaches to meeting those needs; and

WHEREAS, the Department of Human Services delayed implementation of other quality assurance functions to make funding available for a total quality management initiative;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly encourages the Department of Human Services to continue development of a total quality management initiative; and

BE IT FURTHER RESOLVED, that the Department of Human Services be invited to report for the purposes of study, response, and direction to the Legislative Council, or any committee the Legislative Council designates, during the 1993-94 interim on the department's progress in developing total quality management concepts, the human service areas affected by the implementation of total quality management, and the related costs and benefits of total quality management; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-Fourth Legislative Assembly.

Filed March 10, 1993

CHAPTER 720

SENATE CONCURRENT RESOLUTION NO. 4004
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICES ADMINISTRATION

A concurrent resolution encouraging the Department of Human Services to implement recommendations to improve its administrative structure to provide quality and efficiency in the human service delivery system and to report to the Legislative Council; and directing the Legislative Council to monitor the implementation of the recommendation.

WHEREAS, the Legislative Council's Budget Committee on Human Services during the 1991-92 interim conducted a study of the administrative structure; departmental mission, goals, and objectives; and quality assurance functions of the Department of Human Services; and

WHEREAS, the committee engaged a consultant to determine the status of the recommendations by the 1987 Legislative Assembly and the consultant made additional recommendations to improve the administrative structure and processes of the department and determined that the department's commitment to total quality management could assist in addressing the recommendations; and

WHEREAS, the State Auditor's office conducted a performance review for the committee of the Department of Human Services mission, goals, and objectives; quality assurance functions; and adequacy of administrative structure;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly encourages the Department of Human Services to:

1. Strengthen its efforts to mold an integrated, cohesive organizational structure with a common mission and purpose, including defining the division directors' roles within the department, developing a mechanism for advocacy groups to have input regarding budget needs, and deciding whether programs should be established based on a client or program perspective by the use of methods including total quality management principles and concepts;

2. Develop and implement a plan for recruiting, training, rewarding, and retaining quality personnel, including development of career ladders for both administrative and clinical personnel;

3. Develop and expand efforts with higher education institutions in the areas of evaluation, research, training, and consultation;

4. Develop and expand collaborative efforts with private providers, public agencies, schools, and hospitals to develop a systemwide planning and

needs assessment, including developing methods to determine outcomes and to measure success of contractual services;

5. Increase efforts to coordinate the activities of the service programs with the economic assistance programs through joint planning and consultation;

6. Develop an internal decisionmaking process in line with the mission of the organization and focusing on the needs of North Dakota citizens;

7. Establish a mechanism for anticipating future needs and conceptualizing potential approaches to meeting these needs;

8. Clarify roles and responsibilities of the executive director and the cabinet and formalize and document the department's strategic plan identifying mission, goals, and the planning process for long-range and short-range plans;

9. Develop an updated organizational chart reflecting decisionmaking and span of control, make an active effort to develop strong relationships among organizational units, make an active effort to more clearly define the role and utilize the services of the Human Services Advisory Board, and develop guidelines regarding departmental relationships with other agencies and groups;

10. Develop standards against which to measure and evaluate the implementation of total quality management and make a high priority a review of departmental managers' span of control in light of the development of total quality management; and

11. Develop and expand efforts to involve consumers in planning services and conducting outcome studies to determine the department's effectiveness in meeting the needs of consumers; and

BE IT FURTHER RESOLVED, that the Department of Human Services be requested to report to the Legislative Council, or any committee the Legislative Council designates, during the 1993-94 interim on the department's progress in implementing the recommendations and that the Legislative Council monitor the progress of the department in this regard; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 10, 1993

CHAPTER 721

SENATE CONCURRENT RESOLUTION NO. 4005
(Legislative Council)
(Interim Court Services Committee)

JUDICIAL SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the problems associated with the unification of the state's judicial system into a single trial court of general jurisdiction.

WHEREAS, the 1991 Legislative Assembly enacted House Bill No. 1517, which provides a transition process for establishing a single trial court of general jurisdiction through the abolition of county courts and the establishment of additional district court judgeships, with the reduction in the total number of judges to meet the numerical goal set by the Legislative Assembly; and

WHEREAS, the projected budget for the court unification under House Bill No. 1517 is $8.2 million per biennium; and

WHEREAS, there have been several alternative suggestions made for providing the funding for court unification, including redistribution of county court revenues and changes in filing fees; and

WHEREAS, the implementation of the legislation occurs over a period of time, continued changes to the unification plan and to provide for funding may be necessary;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the problems and monitor the implementation of 1991 House Bill No. 1517, including the funding of court unification and possible changes in filing fees or in distribution of county court revenues, in order to ensure that a unified, consolidated court system is accomplished; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 722

SENATE CONCURRENT RESOLUTION NO. 4006
(Legislative Council)
(Interim Finance and Taxation Committee)

FEDERAL LANDS RESPONSIBILITY URGED

A concurrent resolution urging the Congress of the United States to take responsibility to assure that the federal government becomes a responsible landowner by assuming its fair share of the property tax burden on government land.

WHEREAS, in North Dakota and other states the federal government has acquired millions of acres of land for migratory bird sanctuaries, the national park system, the national forest system, water resource development projects, and other uses; and

WHEREAS, Congress has enacted legislation providing for payments in lieu of taxes on federal lands well below the taxes paid by neighboring landowners, and then the federal government has broken the promise of this legislation because Congress has not appropriated sufficient funds to make these payments; and

WHEREAS, in states such as North Dakota with sparse population the removal of federal lands from the tax base shifts a substantial burden of the cost of local governmental services to neighboring landowners; and

WHEREAS, to the growing consternation of North Dakotans, while the federal government lacks sufficient funds to pay its promised share of the tax burden, federal agencies have sufficient funds to acquire additional property upon which taxes will not be paid;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Congress of the United States to take responsibility to assure that the federal government becomes a responsible landowner, a good neighbor, and a taxpaying citizen of each state in which it owns property by enacting legislation to do all of the following:

1. Provide for repeal of laws authorizing acquisition by federal agencies of land for migratory bird refuges and waterfowl production areas or provide that states have an option to rescind previously granted approval for acquisition of such property;

2. Provide that no federal agency or instrumentality may acquire any interest in property in a state unless all federal agencies owning any interest in property in that state have made full in lieu of tax payments equal to one hundred percent of the taxes that would be due against the property under local assessment and levies for the previous two taxable years;

3. Provide that each federal agency or instrumentality owning any property in a state must give the state an annual accounting of acreage and valuation of its holdings in each county in the state;

4. Provide that each federal agency or instrumentality owning any property in a state must give the state an annual report of how much property it intends to acquire within each county in the state;

5. Provide that limitations on the acreage of federally owned property per county must be established and that federal acquisitions must be approved by an evaluation board in each state consisting of representatives of water, farm, and wildlife groups and representatives of all levels of local government;

6. Provide that any federal agency or instrumentality that fails to make full in lieu of tax payments is permanently banned from acquiring any interest in property in that state until full payment is made;

7. Provide that federal agencies and instrumentalities are subject to state laws regarding imposition of interest and penalties and forfeiture of property for nonpayment of taxes in the same manner as any other landowner; and

8. Provide that federal duck stamp revenues and other funds used for acquisition of interests in property be made available for payments in lieu of taxes on property already acquired; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Secretary of the Senate of the United States, the clerk of the House of Representatives, the chairman of the Senate Appropriations Committee, the chairman of the House of Representatives Appropriations Committee, the chairman of the Senate Energy and Natural Resources Committee, the chairman of the House of Representatives Interior and Insular Affairs Committee, the Secretary of the Interior, the President of the United States, and each member of the North Dakota Congressional Delegation.

Filed February 12, 1993

CHAPTER 723

SENATE CONCURRENT RESOLUTION NO. 4008
(Legislative Council)
(Interim Natural Resources Committee)

SAFE DRINKING WATER ACT ENFORCEMENT

A concurrent resolution urging Congress to moderate enforcement of the Safe Drinking Water Act.

WHEREAS, Congress enacted the Safe Drinking Water Act in 1974 and substantially amended the Act in 1986; and

WHEREAS, the Act established a program to require compliance with national drinking water standards for contaminants that may have an adverse effect on the health of people; and

WHEREAS, the National Conference of State Legislatures has estimated that a yearly total of $281 million will be necessary to comply with the provisions of the amendments made in 1986; and

WHEREAS, each state should be allowed to conduct prelimary monitoring to determine whether a particular drinking water rule or further monitoring requirements need to be implemented within that state; and

WHEREAS, each state should be allowed flexibility to apply safe drinking water rules to regions within that state that have documented drinking water problems; and

WHEREAS, North Dakota is faced with the task of fully implementing four major new safe drinking water regulatory packages beginning January 1, 1993, and at least three additional major safe drinking water rule packages beginning January 1, 1997; and

WHEREAS, the Environmental Protection Agency should allow states additional time to adopt and implement these major safe drinking water rule packages;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Congress of the United States to moderate enforcement of the Safe Drinking Water Act; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Administrator of the Environmental Protection Agency, each member of the North Dakota Congressional Delegation, and the Governor.

Filed March 5, 1993

CHAPTER 724

SENATE CONCURRENT RESOLUTION NO. 4010
(Senators Mathern, Scherber)
(Representative DeWitz)

ASSISTANCE PROGRAM ELIGIBILITY STUDY

A concurrent resolution directing the Legislative Council to study the eligibility criteria for economic and medical assistance programs and study the feasibility and desirability of standardizing income and asset criteria for those programs, standardizing pass-through, disallowance, and disregard income criteria, and of establishing criteria to allow persons eligible for those programs to earn income without losing their eligibility for benefits.

WHEREAS, the county human service offices are responsible for administering many different economic and medical assistance programs, which may have originated at the federal, state, or local level; and

WHEREAS, each program may have different eligibility criteria to be reviewed during the application process; and

WHEREAS, different eligibility criteria are confusing to consumers and advocates; and

WHEREAS, standardizing and streamlining these criteria could result in a more efficient administration of economic and medical assistance programs and increase self-esteem; and

WHEREAS, revising the criteria to allow people to earn money without jeopardizing their benefits may encourage independence from the programs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the eligibility criteria for economic and medical assistance programs administered by the counties and study the feasibility and desirability of standardizing the income and asset criteria for those programs, standardizing pass-through, disallowance, and disregard income criteria, and of establishing criteria to allow persons eligible for the programs to earn income without losing their eligibility for benefits; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 19, 1993

CHAPTER 725

SENATE CONCURRENT RESOLUTION NO. 4012
(Senator Evanson)
(Representative Kunkel)

AT-RISK ADOLESCENTS STUDY

A concurrent resolution directing the Legislative Council to study the optimum structure and staff development services necessary to meet the needs of middle-level adolescents identified as the at-risk group in North Dakota schools.

WHEREAS, each middle-level student has individual talents, goals, and aspirations that must be identified and nurtured in school as well as at home at this critical period of development; and

WHEREAS, middle-level students experience rapid and often traumatic physical and emotional changes as well as fluctuation in cognitive processing that call for a school environment staffed by teachers who are knowledgeable and competent in meeting these developmental needs of young adolescents; and

WHEREAS, each middle-level student's needs must be met by experienced personnel who recognize that this period represents the student's last best chance to avoid a diminished future; and

WHEREAS, a mismatch exists between the organization and curriculum of middle-grade schools and the intellectual and emotional needs of young adolescents, so middle-level teachers must be trained to match the organization and curriculum to the needs of middle-level adolescents; and

WHEREAS, in both large and small North Dakota school districts, the vast majority of teachers who are teaching one or two seventh or eighth grade classes are secondary trained and have a major commitment to the high school curriculum; and

WHEREAS, neither the elementary school model of teachers trained as generalists nor the secondary model of teachers trained as specialists in their content fields in departmentalized settings is appropriate for middle-level students; and

WHEREAS, school structure needs examination concurrent with national research to determine the optimum organizational setting for middle-level students; and

WHEREAS, each North Dakota school should assess its effectiveness in meeting the developmental needs of middle-level students; and

WHEREAS, an externally funded project has successfully reached a small number of North Dakota schools and staff;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the optimum structure and staff development services necessary to meet the needs of middle-level adolescents identified as the at-risk group in North Dakota schools; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 19, 1993

CHAPTER 726

SENATE CONCURRENT RESOLUTION NO. 4013
(Senators DeMers, Lips, Mathern)
(Representatives Rydell, Kerzman, Price)

MEDICAL DOCUMENTS STUDY

A concurrent resolution directing the Legislative Council to study the establishment of a state repository for living wills, durable powers of attorney for health care, and other medical documents.

WHEREAS, many North Dakota residents have living wills, documents concerning anatomical gifts, and durable powers of attorney pursuant to chapters 23-06.2, 23-06.4, and 23-06.5 of the North Dakota Century Code; and

WHEREAS, these documents may not be readily available to health care providers in emergencies; and

WHEREAS, a central repository for key medical documents may benefit all residents of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility of establishing a central repository for living wills, documents evidencing anatomical gifts, durable powers of attorney for health care, and other similar documents; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 727

SENATE CONCURRENT RESOLUTION NO. 4015
(Senator Maxson)
(Representative Kretschmar)

POOR CITIZENS LEGAL REPRESENTATION STUDY

A concurrent resolution directing the Legislative Council to study methods for providing civil legal representation and dispute resolution services for poor citizens.

WHEREAS, 89,000 North Dakotans, constituting 15 percent of the North Dakota population, are those with incomes at or below the federal poverty level; and

WHEREAS, this poorest segment of the population has increased by eleven percent during the last decade and is projected to increase further, as citizens near poverty are unable to maintain their independence due to lack of civil legal representation and dispute resolution services; and

WHEREAS, the lack of legal representation and dispute resolution services in civil matters severely affects a person's ability to secure and maintain basic needs of life, such as shelter, food, clothing, and the ability to live in a free and secure environment; and

WHEREAS, special populations of poor North Dakotans, such as the elderly, single parents, children, Native Americans, victims of domestic violence, homeless, mentally ill, developmentally disabled, and farmers and migrant workers, are particularly hurt by the lack of access to civil legal representation and dispute resolution services; and

WHEREAS, poor citizens need not only equal access to legal representation for civil legal matters that affect the general population, but also special civil legal representation to be able to gain equal access to complex government agency processes necessary to secure and retain assistance for the basic necessities of life; and

WHEREAS, needed civil legal dispute resolution services include innovation in pro se services in court proceedings, specialized use of volunteer attorney services, public school education programs, and development of other counseling, mediation, and arbitration forums and advocacy services for poor citizens; and

WHEREAS, a special committee of the Supreme Court of North Dakota concluded that there are approximately 150,000 civil legal problems of poor North Dakotans each year for which legal representation and dispute resolution services are not available and which problems are beyond the capacity of the present civil legal services providers, particularly in legal matters such as child custody, child visitation, child support, domestic violence, protective services for the elderly, children's rights and protections, health care, housing access and eviction, debtor rights and responsibilities, and prompt access to government benefits required to sustain a family at a minimal level until economic independence is regained; and

WHEREAS, with present resources, the State Bar Association of North Dakota and the five providers of civil legal services to the poor serving North Dakotans cannot provide legal help at a level beyond the assistance they provided in 10,000 civil cases in 1992; and

WHEREAS, new approaches are needed to provide effective access to low-cost, balanced, and speedy mechanisms to resolve civil legal problems for poor and near-poor North Dakotans;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the present and projected future need for civil legal representation and dispute resolution services for poor and near-poor citizens in North Dakota; the harms and costs of the lack of civil legal representation and dispute resolution services for these poor and near-poor citizens; and the benefits of alternative methods for providing civil legal representation and dispute resolution services to these citizens; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 728

SENATE CONCURRENT RESOLUTION NO. 4018
(Senator Maxson)
(Representative Kretschmar)

SENTENCING DATA STUDY

A concurrent resolution directing the Legislative Council to study means of gathering data on sentencing in all felony cases and in all misdemeanor cases involving violations of North Dakota Century Code Chapters 12.1-17, 12.1-20, and 14-07.1.

WHEREAS, anecdotal evidence reveals great disparities in the sentences given in criminal cases by courts in this state; and

WHEREAS, there is no systematic method currently in use to track sentences in criminal cases in this state; and

WHEREAS, consistent sentencing, although not necessarily uniform sentencing, would enhance the deterrent effect of sentencing; and

WHEREAS, sentencing practices information would be beneficial to judges, attorneys, law enforcement personnel, and the legislative assembly in carrying out their respective responsibilities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study means of gathering data on the sentencing of all persons convicted of a felony offense and all persons convicted of a misdemeanor in violation of North Dakota Century Code Chapters 12.1-17, 12.1-20, and 14-07.1; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 729

SENATE CONCURRENT RESOLUTION NO. 4019
(Senator Kelsh)

LEGISLATIVE EMPLOYEE COMPENSATION

A concurrent resolution designating Senate and House employees and fixing their compensation and directing the Legislative Council to study legislative employee pay scales to determine if inequities exist and study the feasibility and desirability of providing additional compensation to legislative employees based on prior employment by the Legislative Assembly.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That for the Fifty-third Legislative Assembly, the following persons are employed and appointed as employees of the Senate and House and are to be paid the daily wages opposite their respective names in accordance with their positions:

SENATE	
Carol Siegert, Secretary of the Senate	$95.00
Linda Putz, Assistant Secretary of the Senate	80.00
Sally Paul, Desk Reporter	89.00
Nancy Ludwig, Bill Clerk	74.00
Kevin Urness, Sergeant-at-Arms	74.00
Sandi Kershaw, Secretary to the Majority Leader	80.00
Melynda Schmitz, Staff Assistant to the Majority Leader	74.00
Renae Doan, Secretary to the Minority Leader	80.00
Nancy Lewis, Staff Assistant to the Minority Leader	74.00
Maureen Muhlhauser, Chief Stenographer and Payroll Clerk	74.00
Barbara Dove, Stenographer	62.00
Patricia Heidt, Stenographer	62.00
Stacy Knodle, Stenographer	62.00
Marilyn Rose, Stenographer	62.00
Mary Schmitz, Chief Committee Clerk	74.00
Karen Hilfer, Chief Appropriations Committee Clerk	76.00
Cheryl Kram, Assistant Appropriations Clerk	68.00
Elizabeth Allen, Committee Clerk	68.00
Dolores Boutilier, Committee Clerk	68.00
Jolene Christenson, Committee Clerk	68.00
Lori Domine, Committee Clerk	68.00
Linda Hendrix, Committee Clerk	68.00
Jeri Kurle, Committee Clerk	68.00
Shirley Pasicznyk, Committee Clerk	68.00
Colleen Popelka, Committee Clerk	68.00
Jeannette Shaw-Lynch, Committee Clerk	68.00
Peggy Sims, Committee Clerk	68.00
Wanda Homan, Assistant Committee Clerk	65.00
Michael Kemnitz, Deputy Sergeant-at-Arms	62.00
William Kershaw, Deputy Sergeant-at-Arms	62.00

Vernon Erickson, Assistant Sergeant-at-Arms	58.00
Tony Clark, Assistant Sergeant-at-Arms	58.00
Chris Dahl, Assistant Sergeant-at-Arms	58.00
William Skjerven, Supply Room Coordinator	58.00
Althea Yantzer, Chief Page and Bill Book Clerk	65.00
Daniel Holden, Desk Page	58.00
Carol Smith, Journal Page	58.00
Jim DuBois, Page and Bill Book Clerk	58.00
Mark Jensen, Page and Bill Book Clerk	58.00
Cheryl Meyer-Bailey, Page and Bill Book Clerk	58.00
Lynn Senger, Page and Bill Book Clerk	58.00
Jeff Spitzer, Page and Bill Book Clerk	58.00
Kylah Aull, Page and Bill Book Clerk	58.00
Robbie Jewett, Page and Bill Book Clerk	58.00
Shane Molander, Page and Bill Book Clerk	58.00
Clint Schiefelbein, Telephone Attendant	58.00
Lorissa Birst, Telephone Attendant	58.00
Ruby Stadick, Telephone Attendant	58.00
Dolores Draeb, Telephone Attendant	58.00
Janet Mertens, Telephone Page	58.00
Maida Loehrke, Information Desk Attendant	58.00
Pamela Bergman, Chief Bill and Journal Clerk	68.00
Burnetta Barth, Bill Room Clerk	58.00
Selma Carlson, Bill Room Clerk	58.00
Scott Wagar, Bill Room Clerk	58.00
Ledores Robey, Bill Room Clerk	58.00
Nettie Monroe, Journal Room Clerk	58.00
Paul Janke, Journal Room Clerk	58.00
Walter Schramm, Parking Lot Attendant	58.00
Lucas Giesinger, Janitor (estimated partial pay)	57.28
Martha Heid, Janitor (estimated partial pay)	44.80
Ron Glaser, Janitor (estimated partial pay)	36.00

HOUSE

Roy Gilbreath, Chief Clerk	$95.00
Jeane Marschke, Assistant Chief Clerk	80.00
Barbara Middaugh, Desk Reporter	89.00
Lance Hagen, Bill Clerk	74.00
Richard Chorlton, Sergeant-at-Arms	74.00
Lorrie Giese, Secretary to the Speaker	74.00
Mavis Patchen, Secretary to the Majority Leader	80.00
Keith Magnusson, Staff Assistant to the Majority Leader	74.00
Arlene Haunson, Secretary to the Minority Leader	80.00
April Fairfield, Staff Assistant to the Minority Leader	74.00
Georgia Clement, Chief Stenographer and Payroll Clerk	74.00
Sharon Jensen, Stenographer	62.00
Phyllis Johnson, Stenographer	62.00
DeLores Knutson, Stenographer	62.00
Candace Makeeff, Stenographer	62.00
John Warner, Stenographer	62.00
Lynette Dunbar, Typist	62.00
Inez Ryberg, Typist	62.00
Darlyne Clausnitzer, Chief Committee Clerk	74.00

Carol Nitschke, Appropriations Committee Clerk	76.00
Carolyn Hoffmann, Assistant Appropriations Committee Clerk	68.00
Judi Markegard, Assistant Appropriations Committee Clerk	68.00
Kathleen Steidler, Assistant Appropriations Committee Clerk	68.00
Lavata Becker, Committee Clerk	68.00
Jocelyn Deutsch, Committee Clerk	68.00
Patricia Dietz, Committee Clerk	68.00
Laurie Kaelberer, Committee Clerk	68.00
Janel Rogstad, Committee Clerk	68.00
Lois Schmidt, Committee Clerk	68.00
Constance Simenson, Committee Clerk	68.00
Janice Stein, Committee Clerk	68.00
Wanda Thompson, Committee Clerk	68.00
Jonathan Thomson, Committee Clerk	68.00
Barbara Langemo, Assistant Committee Clerk	65.00
Judi Kallis, Deputy Sergeant-at-Arms	62.00
Marion Bassingwaite, Assistant Sergeant-at-Arms	58.00
Bernice Clark, Assistant Sergeant-at-Arms	58.00
Stephanie Fisher, Assistant Sergeant-at-Arms	58.00
Brenda Huff, Assistant Sergeant-at-Arms	58.00
John McMahon, Assistant Sergeant-at-Arms	58.00
Jerome Moszer, Assistant Sergeant-at-Arms	58.00
John Wanser, Assistant Sergeant-at-Arms	58.00
Gloria Olson, Chief Page and Bill Book Clerk	65.00
David Hougen, Assistant Chief Page and Bill Book Clerk	62.00
Jocelyn Soderstrom, Journal Page	58.00
Barbara Larson, Desk Page	58.00
Karen Schmidt, Desk Page	58.00
Gere Stetson, Desk Page	58.00
Tracy Duchsherer, Page and Bill Book Clerk	58.00
Kathleen Erhardt, Page and Bill Book Clerk	58.00
Christine Harmon, Page and Bill Book Clerk	58.00
David Hogness, Page and Bill Book Clerk	58.00
Scott Immel, Page and Bill Book Clerk	58.00
Bunny Malm, Page and Bill Book Clerk	58.00
Hope Olson, Page and Bill Book Clerk	58.00
Perry Ostmo, Page and Bill Book Clerk	58.00
Lana Overton, Page and Bill Book Clerk	58.00
Jeff Peterson, Page and Bill Book Clerk	58.00
Fay Pitzer, Page and Bill Book Clerk	58.00
Scott Power, Page and Bill Book Clerk	58.00
Kenneth Radenz, Page and Bill Book Clerk	58.00
Brenda Smith, Page and Bill Book Clerk	58.00
Carl Strum, Page and Bill Book Clerk	58.00
Matthew Thon, Page and Bill Book Clerk	58.00
Dawn Van Horn, Page and Bill Book Clerk	58.00
Phyllis Connolly, Chief Telephone Attendant	62.00
Nancy Dawson, Telephone Attendant	58.00
Irma Holmstrom, Telephone Attendant	58.00
Lorraine Moos, Telephone Attendant	58.00
Merry Hook, Telephone Page	58.00
Margaret Puetz, Information Desk Attendant	58.00
Faye Caya, Bill Room Clerk	58.00

Peter Nagel, Bill Room Clerk	58.00
Elias Nemer, Bill Room Clerk	58.00
Peter Schafer, Bill Room Clerk	58.00
Hella Keller, Journal Room Clerk	58.00
Richard Schell, Journal Room Clerk	58.00
Joe Emineth, Parking Lot Attendant	58.00
Erick Glasser, Janitor (estimated partial pay)	36.00
Vern Hoffmann, Janitor (estimated partial pay)	39.00
Jeffrey Jensen, Janitor (estimated partial pay)	36.00
Francis Scharosch, Janitor (estimated partial pay)	41.36

BE IT FURTHER RESOLVED, that each employee of the Fifty-third Legislative Assembly who was employed by the Fifty-second Legislative Assembly is entitled to any additional per day compensation as was granted by the Fifty-second Legislative Assembly; and

BE IT FURTHER RESOLVED, that each employee who was not employed by the Fifty-second Legislative Assembly, but was employed by the Legislative Assembly during a previous regular legislative session during which that employee was paid for at least 45 days, as either an employee of the Senate or the House, is entitled to receive any additional per day compensation, to which the employee would have been entitled if the employee had been employed by the Fifty-second Legislative Assembly, and to receive the additional compensation, which may not exceed five dollars per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment; and

BE IT FURTHER RESOLVED, that the Legislative Council study legislative employee pay scales to determine if inequities exist and study the feasibility and desirability of providing additional compensation to legislative employees based on prior employment by the Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 5, 1993

CHAPTER 730

SENATE CONCURRENT RESOLUTION NO. 4021
(Senator Tallackson)
(Representative D. Olsen)

DEPARTMENT OF DEVELOPMENTAL DISABILITIES STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of establishing a Department of Developmental Disabilities and Mental Health.

WHEREAS, the services provided developmentally disabled persons and seriously mentally ill persons may be significant enough to justify departmental status on the state level; and

WHEREAS, the Department of Human Services with its current budget request approaching a billion dollars a biennium is becoming so large that it may not be giving adequate attention to programs involving mental health and developmental disabilities; and

WHEREAS, the creation of a Department of Developmental Disabilities and Mental Health and a downsized Department of Human Services may give the Legislative Assembly an opportunity to improve its control and evaluation of programs administered by the two departments; and

WHEREAS, the removal of these programs from the Department of Human Services would preclude the use of moneys appropriated by the Legislative Assembly for developmentally disabled and seriously mentally ill persons from being used for other human service programs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study the feasibility of establishing a Department of Developmental Disabilities and Mental Health; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 19, 1993

CHAPTER 731

SENATE CONCURRENT RESOLUTION NO. 4023
(Senator Tomac)

NOXIOUS WEED TRUST FUND STUDY

A concurrent resolution directing the Legislative Council to study the development of a Noxious Weed Trust Fund.

WHEREAS, leafy spurge already infests 1.1 million acres of land and has the ability to double its acreage of infestation every ten years; and

WHEREAS, the direct economic impact of leafy spurge in North Dakota in 1990 was $23.2 million and is estimated to be $29.8 million by 1995; and

WHEREAS, the state of North Dakota has struggled with the need to provide a consistent level of funding to counties for the effective management of leafy spurge and other noxious weeds; and

WHEREAS, the state of Montana has created a successful Montana Noxious Weed Trust Fund;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the formation of a Noxious Weed Trust Fund as a means of providing a consistent level of funding for noxious weed management; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement its recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 5, 1993

CHAPTER 732

SENATE CONCURRENT RESOLUTION NO. 4025
(Senator Freborg)

EDUCATIONAL TELECOMMUNICATIONS COUNCIL STUDY

A concurrent resolution directing the Legislative Council to study the North Dakota Educational Telecommunications Council.

WHEREAS, the Educational Telecommunications Council is charged with creating educational telecommunications programs and systems within the state; and

WHEREAS, the Educational Telecommunications Council has broad powers regarding the development of statewide programs and systems; and

WHEREAS, the Educational Telecommunications Council contracts for the building and operating of public television stations; and

WHEREAS, the Educational Telecommunications Council receives gifts and contributions from public and private sources, and may solicit grants to be used in conjunction with moneys appropriated by the Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the Educational Telecommunications Council, the council's role in the creation of educational telecommunications programs and systems within the state, the powers and duties of the council, the council's abilities to receive gifts and contributions from public and private sources, the council's ability to solicit grants for use in conjunction with moneys appropriated by the Legislative Assembly; and the council's expenditure of all funds received; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 733

SENATE CONCURRENT RESOLUTION NO. 4026
(Senator Grindberg)
(Representatives Austin, Poolman)

HIGHER EDUCATION DAY

A concurrent resolution declaring Friday, February 26, 1993, as Higher Education Day.

WHEREAS, the state of North Dakota has a strong tradition of supporting its institutions of higher education and of recognizing the students who attend those institutions; and

WHEREAS, students attending these institutions of higher education are visiting the Legislative Assembly to express their concerns about the future of higher education in this state; and

WHEREAS, the Legislative Assembly acknowledges the need to preserve the quality of higher education the state has enjoyed in the past; and

WHEREAS, the Legislative Assembly acknowledges the students at the institutions of higher education who would like to express their appreciation to the members of the Legislative Assembly for their hard work and their attention to the status of higher education in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly declares Friday, February 26, 1993, to be North Dakota Higher Education Day.

Filed February 16, 1993

CHAPTER 734

SENATE CONCURRENT RESOLUTION NO. 4027
(Senators Nelson, Goetz)

REVENUE ESTIMATING STUDY

A concurrent resolution directing the Legislative Council to study methods to improve the development of biennial revenue estimates.

WHEREAS, one of the major budget problems of the 50 states is the need to improve revenue estimating procedures; and

WHEREAS, the volatility of the North Dakota economy is affected both by weather conditions and fluctuation in the price of oil; and

WHEREAS, revenue estimates in North Dakota have not been accompanied by a full range of options outlining alternative economic conditions; and

WHEREAS, further analysis of revenue estimates by the Legislative Assembly and the Executive Budget Office during the legislative session may improve estimates; and

WHEREAS, Budget Section review of early forecasts prior to the development of the executive budget may be helpful to both the Governor and the Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council, through the Budget Section, study methods to improve the development of biennial revenue estimates, review recently implemented practices in other states, and consider a process for legislative review of estimates during the legislative session; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 735

SENATE CONCURRENT RESOLUTION NO. 4028
(Senators Nelson, Wogsland)

FEDERAL MANDATES OPPOSITION

A concurrent resolution urging Congress to either refrain from imposing on states and local governments the costs of programs mandated by federal law or fully fund those programs.

WHEREAS, the Congress of the United States continues to mandate programs that impose costs on states and local governments; and

WHEREAS, states and local governments have limited resources and are struggling to provide for the needs of their citizens; and

WHEREAS, imposing the costs of congressional programs upon states and political subdivisions is a pusillanimous means for Congress to avoid its responsibility to deal with federal budget issues; and

WHEREAS, Congress must face the same difficult decisions faced by state and local governments, that if a program is not worthy of full funding perhaps it is not worthy of enactment;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly of North Dakota urges the Congress of the United States to either refrain from imposing the cost of programs on state and local governments or to appropriate sufficient federal moneys to pay the full costs of programs mandated by Congress; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1993

CHAPTER 736

SENATE CONCURRENT RESOLUTION NO. 4029
(Senators Lindgren, Krauter, Mathern, Nelson)
(Representatives Gates, Gorman)

DOLLARS FOR SCHOLARS PROGRAM

A concurrent resolution commending the efforts of the volunteers and staff involved with the Dollars for Scholars program.

WHEREAS, North Dakota, like many other states, faces increasing difficulty in funding primary, secondary, and higher education; and

WHEREAS, higher education costs continue to rise, thereby placing a greater burden upon students and their families; and

WHEREAS, North Dakota continues to support and encourage the education of all students in order to ensure individual growth and the variety of benefits that educated individuals bring to the state; and

WHEREAS, the Citizens' Scholarship Foundation of America has, through the Dollars for Scholars program, raised over $725,000 in endowment funds through 31 community chapters; and

WHEREAS, this effort resulted in North Dakota colleges and universities receiving nearly $250,000 in cross-match grants from the Citizens' Scholarship Foundation of America; and

WHEREAS, in 1991 and 1992, this effort resulted in 350 scholarship awards to young North Dakotans, totaling over $111,000; and

WHEREAS, the national office of the Citizens' Scholarship Foundation of America has recognized that in the last year, the percentage increase of scholarship dollars available through the North Dakota Dollars for Scholars chapters is 10 times greater than the percentage increase nationally; and

WHEREAS, the growth in the number of North Dakota Dollars for Scholars chapters is five times greater than the national average; and

WHEREAS, opportunities to develop additional Dollars for Scholars chapters in North Dakota communities remain available;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly commends the volunteers and staff involved in the Dollars for Scholars program for the national recognition they received because of their outstanding contributions to the students and the citizens of North Dakota; and

BE IT FURTHER RESOLVED, that the citizens of North Dakota are encouraged to develop and support Dollars for Scholars chapters in order to provide increased educational opportunities for students seeking higher education; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the national office of the Citizens' Scholarship Foundation of America in St. Peter, Minnesota, and to Mr. Robert J. Alin, the North Dakota Volunteer Area Director, in West Fargo, North Dakota.

Filed March 8, 1993

CHAPTER 737

SENATE CONCURRENT RESOLUTION NO. 4030
(Senators Nething, Marks)
(Representatives Hanson, Howard, Kroeber, Wanzek)

SPORTS HALL OF FAME

A concurrent resolution designating the North Dakota Sports Hall of Fame in Jamestown as the official North Dakota Sports Hall of Fame.

WHEREAS, the North Dakota Sports Hall of Fame is a nonprofit corporation established in Jamestown to honor individuals who have made significant contributions to various sports in North Dakota; and

WHEREAS, the purpose of the North Dakota Sports Hall of Fame is to honor and recognize those persons who have played a major role in the growth and development of athletics in North Dakota and to further promote athletics and sportsmanship to the public of North Dakota by honoring those who have made outstanding contributions in sports; and

WHEREAS, the North Dakota Sports Hall of Fame at present includes the following groups: North Dakota Amateur Baseball, Inc.; North Dakota Amateur Softball Association, Inc.; North Dakota High School Coaches Association; North Dakota Associated Press Sportscasters and Sportswriters; North Dakota Men's Bowling Association; North Dakota Officials Association; North Dakota Women's Bowling Association; North Dakota Amateur Hockey Association; North Dakota American Legion Junior Baseball; North Dakota Horseshoe Association; North Dakota Men's Golf Association; North Dakota Ladies Golf Association; Handball Association of North Dakota; Babe Ruth Baseball Association of North Dakota; North Dakota Recreation and Park Directors Association; and North Dakota Shooters Association; and

WHEREAS, the North Dakota Sports Hall of Fame has established the Cliff Cushman Memorial Award, named after an outstanding North Dakota Olympic athlete, to recognize outstanding achievements of lasting significance in sports; and

WHEREAS, the Cliff Cushman Memorial Award is the highest honor bestowed by the North Dakota Sports Hall of Fame on a North Dakotan solely for contributions to sports;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

The North Dakota Sports Hall of Fame in Jamestown is designated as North Dakota's official Sports Hall of Fame; and

BE IT FURTHER RESOLVED, that the Legislative Assembly shall recognize the Cliff Cushman Memorial Award as the highest honor to be awarded to a North Dakotan solely for his contributions to sports and those so honored will receive proper recognition in the North Dakota Sports Hall of Fame.

Filed March 19, 1993

CHAPTER 738

SENATE CONCURRENT RESOLUTION NO. 4031
(Senators Kelsh, Keller, Langley)
(Representative Belter)

AGRICULTURAL COMMODITY CONTRACT STUDY

A concurrent resolution directing the Legislative Council to study problems relating to the use of contracts for the sale of agricultural commodities.

WHEREAS, there are many kinds of commodity contracts designed to provide farmers and ranchers with a measure of income assurance and stability; and

WHEREAS, agricultural contracting is likely to expand due to the provisions of the 1990 farm bill and the increased emphasis on agricultural diversification and specialty crops; and

WHEREAS, the perishable nature of agricultural commodities, the vulnerable financial position of many farmers, and the difficulty faced by farmers in assessing commodity contracts can create risks for farmers who engage in agricultural contracting;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the problems relating to the use of contracts for the sale of agricultural commodities by North Dakota farmers and ranchers to persons other than public warehousemen licensed under chapter 60-02, including potential risks contained in current contracting practices, and laws and bills from other states relating to agricultural contracting; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 20, 1993

CHAPTER 739

SENATE CONCURRENT RESOLUTION NO. 4032
(Senators Marks, O'Connell, Solberg)
(Representatives Dobrinski, Gerntholz, Hanson)

CONSERVATION RESERVE PROGRAM

A concurrent resolution urging Congress to continue a land retirement program in excess of 45 million acres at the expiration of the current conservation reserve program contracts.

WHEREAS, the conservation reserve program has protected the long-term food-producing capability of the United States by reducing wind and water erosion of cropland; and

WHEREAS, the conservation reserve program has protected and improved water quality by reducing sedimentation and nonpoint source pollution; and

WHEREAS, the conservation reserve program has provided excellent wildlife habitat for game and nongame species; and

WHEREAS, the conservation reserve program has reduced federal farm program expenditures for deficiency payments, diversion payments, and commodity loan and storage payments; and

WHEREAS, the conservation reserve program has provided income to over 18,000 contractholders in North Dakota; and

WHEREAS, the United States currently has surplus cropland and will continue to have such in the foreseeable future;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Congress of the United States to continue a land retirement program in excess of 45 million acres at the expiration of the current conservation reserve program contracts; and

BE IT FURTHER RESOLVED, that the North Dakota conservation reserve program coalition be authorized to define disaster conditions, and to recommend regulations and the price for the emergency use of conservation reserve program lands; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Secretary of Agriculture, the chairman of the House Agriculture Committee, the chairman of the Senate Agriculture, Nutrition, and Forestry Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1993

CHAPTER 740

SENATE CONCURRENT RESOLUTION NO. 4033
(Senators Marks, Nalewaja, Nelson, Scherber)
(Representatives Cleary, D. Olsen)

FREEDOM OF CHOICE ACT OPPOSITION

A concurrent resolution urging Congress to reject the Freedom of Choice Act.

WHEREAS, it has traditionally been the right of a state to be self-determining with the ability to pass laws governing and pertaining to activities within the state and it is imperative a state be able to preserve that right; and

WHEREAS, a bill, cited by its sponsors as the Freedom of Choice Act, now being considered by the Congress of the United States, would invalidate most North Dakota abortion-related regulations, including virtually all of the North Dakota Abortion Control Act, most of which is now recognized as constitutional and within the province of state jurisdiction in light of decisions by the United States Supreme Court; and

WHEREAS, the Freedom of Choice Act, as discussed in the 1992 United States Senate Labor and Human Resources Committee report, would invalidate the North Dakota informed consent law in its entirety including provisions that give a woman seeking an abortion the right to know the probable gestational age of her unborn child, the name of the physician who would perform the abortion, the particular medical risks associated with the abortion procedure to be used as well as the medical risks associated with carrying the child to term, and provisions that give a woman the right to obtain information about the medical benefits that may be available for her and her child before, during, and after the birth of the child, and information containing objective, scientifically accurate medical facts about the development of the unborn child; and

WHEREAS, the Freedom of Choice Act would invalidate North Dakota's requirement that a minor seeking an abortion first obtain consent of both parents or authorization of a court before an abortion because the Freedom of Choice Act, on its face, allows a state to require only "parental involvement" such as parental notification, not consent, and would not even allow the state to require mere notification unless the state also provides each minor the option of consulting an "other responsible adult," thereby circumventing the involvement of a minor's parents; and

WHEREAS, the Freedom of Choice Act would invalidate North Dakota Century Code section 14-02.1-04, which permits an abortion to be performed after a unborn child attains viability only when the physician determines that the pregnancy will cause "a substantial risk of grave impairment" to the mother's health, because the Freedom of Choice Act, as discussed in the United States Senate Labor and Human Resources Committee report, prohibits the states from limiting in any way the discretion of abortion-performing doctors to perform abortions after viability to enhance the mental or emotional health of the mother; and

WHEREAS, the Freedom of Choice Act only allows a state to protect unwilling individuals, but not hospitals, from having to participate in the performance of abortion when they are conscientiously opposed, and thus it would invalidate North Dakota Century Code section 23-16-14, which protects the freedom of hospitals to refuse to make their facilities available for the performance of abortions, exposing North Dakota's hospitals that refuse to perform abortions to lawsuits seeking to force them to do so against their conscience; and

WHEREAS, the Freedom of Choice Act, as discussed in the United States Senate Labor and Human Resources Committee report, would invalidate North Dakota Century Code section 14-02.3-04, which prevents the use of North Dakotans' tax dollars to provide operating rooms and equipment in public hospitals for the performance of abortions except when an abortion is necessary to preserve the life of the mother thereby effectively overturning the 1977 Supreme Court ruling in Poelker v. Doe, 432 U.S. 519 (1977); and

WHEREAS, because the Freedom of Choice Act would require a state to prove that any health regulation of abortion is "medically necessary" to protect the health of a woman undergoing the procedure, those provisions in North Dakota's Abortion Control Act requiring the filing of consent forms, the reporting of complications, and the maintenance of patient records would be held to a higher scrutiny in determining their validity than North Dakota record requirements for other medical procedures; and

WHEREAS, the Freedom of Choice Act would invalidate the North Dakota requirement that only licensed physicians perform abortions, because the United States Labor and Human Resources Committee report in effect invites litigation to strike down a physician requirement on the basis that it is not "medically necessary" that physicians, as opposed to other trained personnel, perform abortions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Congress of the United States to reject the Freedom of Choice Act, which would invalidate virtually every abortion-related regulation enacted by the people of North Dakota through their elected officials; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed March 22, 1993

CHAPTER 741

SENATE CONCURRENT RESOLUTION NO. 4035
(Senators Kelsh, Redlin)

HEALTH INSURANCE DEDUCTION URGED

A concurrent resolution urging the Congress of the United States to allow self-employed farmers, ranchers, and small business owners an income tax deduction for health insurance premiums.

WHEREAS, the United States is spending almost 14 percent of its gross national product on health care, yet 37 million Americans do not have health insurance; and

WHEREAS, more than 87,000 North Dakotans are without health insurance, of whom more than 20,000 are children; and

WHEREAS, although North Dakota ranks fifth in per capita health care expenditures, rural hospitals, emergency rooms, and ambulance services are in financial difficulty; and

WHEREAS, health insurance premiums should be recognized as a business expense for all businesses that incur such expenses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Congress of the United States to enact legislation to allow self-employed farmers, ranchers, and small business owners an income tax deduction for the cost of health insurance premiums; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the United States House of Representatives Ways and Means Committee, the chairman of the United States Senate Finance Committee, and each member of the North Dakota Congressional Delegation.

Filed March 19, 1993

CHAPTER 742

SENATE CONCURRENT RESOLUTION NO. 4036
(Senator W. Stenehjem)
(Representative Clayburgh)

GOVERNMENTAL IMMUNITY STUDY

A concurrent resolution directing the Legislative Council to study the doctrine of governmental immunity of the state.

WHEREAS, the doctrine of governmental immunity prohibits any injured citizen from making claims against or suing the state for wrongful acts or torts of government employees and agents; and

WHEREAS, the doctrine of governmental immunity was based on the English tradition of sovereign immunity--the king could do no wrong; and

WHEREAS, the doctrine was judicially adopted in North Dakota for both the state and political subdivisions; and

WHEREAS, the state constitution does not specifically provide for governmental immunity for either the state or its political subdivisions, but rather provides that suits may be brought against the state in such manner, in such courts, and in such cases, as the Legislative Assembly may, by law, direct; and

WHEREAS, in Kitto v. Minot Park District, 224 N.W.2d 795 (N.D. 1974), the court reversed its earlier position and abolished the judicial doctrine of governmental immunity as it applied to political subdivisions; and

WHEREAS, the Legislative Assembly subsequently enacted North Dakota Century Code Chapter 32-12.1, which provides for the circumstances under which a political subdivision can be held liable for injuries to an individual and establishes monetary damage limits upon those suits; and

WHEREAS, North Dakota Century Code Chapter 32-12.1 has provided for recovery on the part of individuals that are injured and has adequately protected political subdivisions from extremely large award amounts; and

WHEREAS, the majority of states have eliminated total state immunity and have further provided for statutory limits on the awards;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the doctrine of governmental immunity of the state, with special emphasis on monetary limitations on any actions allowed; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 10, 1993

CHAPTER 743

SENATE CONCURRENT RESOLUTION NO. 4037
(Senators Kelsh, Tomac)

FAIR INTERNATIONAL TRADE URGED

A concurrent resolution urging the President and Congress to institute policies encouraging fair trade between nations, and expressing opposition to the General Agreement on Tariffs and Trade and the North American Free Trade Agreement.

WHEREAS, the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA) are designed to improve trade relations between countries; and

WHEREAS, the General Agreement on Tariffs and Trade and the North American Free Trade Agreement would mix vastly different standards of living, wage structures, social protection measures, and regulatory climates; and

WHEREAS, the General Agreement on Tariffs and Trade and the North American Free Trade Agreement can create opportunities for exploitation; and

WHEREAS, because North Dakota has a largely agricultural economy, it is incumbent on this state to be a leader in examining the contents and impacts of these and other international trade agreements; and

WHEREAS, the result of free trade with Canada has decimated North Dakota's wheat market; and

WHEREAS, United States companies have moved manufacturing plants to Mexico and are taking advantage of wages averaging between 75 cents and $1 an hour; and

WHEREAS, 500,000 jobs previously held in the United States are now being held in Mexico; and

WHEREAS, a policy of fair trade between free and independent nations would maintain a balanced economy in each nation, restrict monopoly, revitalize business, and bring about prosperity and well-being for all people; and

WHEREAS, both the General Agreement on Tariffs and Trade and the North American Free Trade Agreement are on a "fast track" path that allows only 90 days for congressional review and approval or rejection but allows no congressional amendments;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the President and Congress to institute policies encouraging fair trade between nations which will ensure profitable markets and income for all agricultural producers and living wages for laborers; and

BE IT FURTHER RESOLVED, that the Fifty-third Legislative Assembly urges a meaningful review by Congress of all free trade agreements; and

BE IT FURTHER RESOLVED, that the Fifty-third Legislative Assembly expresses its opposition to "fast track" authority that allows the President to submit international trade agreements to Congress for review but does not allow for congressional amendments; and

BE IT FURTHER RESOLVED, that the Fifty-third Legislative Assembly expresses its opposition to the General Agreement on Tariffs and Trade and to the North American Free Trade Agreement in their current forms; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States and to each member of the North Dakota Congressional Delegation.

Filed March 22, 1993

CHAPTER 744

SENATE CONCURRENT RESOLUTION NO. 4038
(Senator Lips)

WORKERS' COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study the workers' compensation system including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social service benefits, and employer and employee fraud.

WHEREAS, workers' compensation law is designed to provide sure and certain relief to employees injured in the course of their employment; and

WHEREAS, the dramatic increase in the cost of providing workers' compensation, the complexity of litigation involving the bureau in the last 10 years, and premium income that is significantly less than fund expenditures jeopardize the ability of the bureau to provide compensation to injured employees; and

WHEREAS, the Legislative Assembly enacted legislation in 1991 to establish programs to provide for the more efficient and effective administration of benefits by the bureau; and

WHEREAS, self-insurance or private insurance may be a viable option for some North Dakota employers to provide workers' compensation coverage to their employees; and

WHEREAS, the bureau's claims analysts and rehabilitation staff should be qualified and adequately trained to provide consistent claims administration and rehabilitation programs; and

WHEREAS, the extent to which fraud is a contributing factor in increasing workers' compensation costs is not known; and

WHEREAS, insufficient data is available to make reasoned and informed decisions concerning major changes in the structure and organization of the bureau, claims adjudication, benefits, premiums, and other matters that may affect the solvency of the fund;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the North Dakota workers' compensation system including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social service benefits, and employer and employee fraud; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 27, 1993

CHAPTER 745

SENATE CONCURRENT RESOLUTION NO. 4039
(Senators Heinrich, Holmberg)
(Representatives Hanson, Monson)

TEACHER ASSISTANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing programs to assist first-year teachers.

WHEREAS, it is the responsibility of the state to maintain a system of public schools; and

WHEREAS, this responsibility is satisfied in part by retaining competent, experienced, and enthusiastic teachers; and

WHEREAS, 23 percent of teachers leave the profession after their first year; and

WHEREAS, 61 percent of teachers leave the profession after their fifth year; and

WHEREAS, this departure of highly educated professionals is a tremendous financial loss to the state; and

WHEREAS, the implementation of mentoring programs, internships, evaluations, supervisions, and peer assistance procedures could enhance the chances for success of first-year teachers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of implementing programs to assist first-year teachers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 746

SENATE CONCURRENT RESOLUTION NO. 4040
(Senators Tomac, Freborg, Yockim)
(Approved by the Delayed Bills Committee)

MISSOURI RIVER BANK PROTECTION

A concurrent resolution urging the Congress of the United States and the United States Army Corps of Engineers to assume responsibility for Missouri River bank erosion downstream from all Pick-Sloan Plan dams, including the Garrison Dam to Oahe Reservoir reach in North Dakota, and to continue a program of annually appropriating funds for the maintenance and construction of bank protection projects.

WHEREAS, the Flood Control Act of 1944, as amended, assured all 10 states within the Missouri River Basin equal benefits under a control and management program that came to be commonly known as the Pick-Sloan Plan; and

WHEREAS, the Congress of the United States has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan Plan; and

WHEREAS, the Pick-Sloan Plan provides major flood control benefits, recreational benefits, power supply benefits, and navigational benefits for states lying below Sioux City, Iowa, through construction of large reservoirs in states lying above that point, and by channelizing the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, at federal expense; and

WHEREAS, the Pick-Sloan Plan reservoirs have been in place for many years, thus providing the downstream states in the Missouri River Basin all of the benefits promised in the Pick-Sloan Plan for the past 35 years; and

WHEREAS, construction of facilities under the Pick-Sloan Plan has, to date, resulted in $3 billion of flood protection to downstream interests and has allowed these downstream interests to develop the original floodplain of the Missouri River for industrial, municipal, and agricultural uses; and

WHEREAS, the Army Corps of Engineers has stabilized and continues to maintain the entire channel of the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, all at federal cost; and

WHEREAS, under the Pick-Sloan Plan, North Dakota has sacrificed over 550,000 acres of land, much of which was prime agricultural land; and

WHEREAS, almost two-thirds of the inexpensive hydroelectric power generated by Garrison Dam in North Dakota which was built pursuant to the Pick-Sloan Plan is used in states other than North Dakota; and

WHEREAS, the Army Corps of Engineers stated in its final report to Congress dated December 1981 concerning Missouri River streambank erosion that "bank erosion in this reach results in a permanent net loss of high value lands. This process,

unless halted, would eventually transform the present river into a wide area of sandbars and channels, occupying an increasing proportion of the valley width between the bluffs"; and

WHEREAS, the lands adjacent to the Missouri River have been and will continue to be seriously eroded and permanently lost to the local landowners and the state of North Dakota because of reservoir management which releases highly fluctuating amounts of clear water capable of eroding and transporting large amounts of soil; and

WHEREAS, soil eroded from the banks of the Missouri River is being deposited as a delta in the headwaters of the Oahe Reservoir and Lake Sakakawea thereby causing the water table to rise under the adjacent land, and is increasing the frequency and severity of ice jam hazards and has, according to recent Army Corps of Engineers pronouncements, endangered 6,000 acres of land containing 40 homes and valuable farmland around Lake Oahe; and in the headwater area of Lake Sakakawea, the delta is endangering the 3,200 irrigated acres in the Buford-Trenton Irrigation District, is endangering the water intake for the city of Williston, and is endangering portions of Williston and many acres of valuable farmland in addition to the Buford-Trenton Irrigation District; and

WHEREAS, a similar bank erosion problem exists for a 58-mile reach on the South Dakota-Nebraska border downstream from the Gavins Point Dam and also between Fort Peck Dam in Montana and Lake Sakakawea; and

WHEREAS, destructive bank erosion continues when high winter water releases for power generation occur, even in these drought years of sharply lower total annual releases; and

WHEREAS, Section 33 of the Water Resources Development Act of 1988 amended the Flood Control Act of 1944 and directed the Secretary of the Army to undertake measures, such as the maintenance and rehabilitation of existing structures, which the Secretary of the Army determines are needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River between Fort Peck Dam in Montana and a point 58 miles downstream of the Gavins Point Dam on the South Dakota-Nebraska border; and

WHEREAS, Congress appropriated $1.5 million in fiscal year 1992 and $1.5 million in fiscal year 1993 for the purpose of protecting the banks of the Missouri River; and

WHEREAS, the Army Corps of Engineers has not used any of these funds to protect the eroding banks because it maintains that a project must have a cost benefit ratio greater than one to be constructed; although this was clearly not the legislative intent of Section 33 of the Water Resources Development Act of 1988;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the United States Congress to assume responsibility for the protection of lands endangered below all Pick-Sloan Plan dams by the operation of the Pick-Sloan Plan; and

BE IT FURTHER RESOLVED, that Congress is urged to continue a program of annually appropriating funds to repair existing bank protection projects now in

danger of failure and to begin to construct bank protection projects in the most critical locations; and

BE IT FURTHER RESOLVED, that Senator Kent Conrad, Senator Byron Dorgan, and Congressman Earl Pomeroy are urged to work diligently with the senators and congressmen of the states of Montana, South Dakota, and Nebraska to secure appropriations of these necessary funds; and

BE IT FURTHER RESOLVED, that funding for this project not be a normal federal water project appropriation, but rather be charged to the operation of the Pick-Sloan Plan; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers is urged to initiate a program to construct bank protection structures along the Missouri River between Fort Peck and a point 58 miles downstream of Gavins Point Dam; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Army; the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; Governor Edward T. Schafer; the members of the North Dakota State Water Commission; and each member of the North Dakota, South Dakota, Nebraska, and Montana Congressional Delegations.

Filed March 22, 1993

CHAPTER 747

SENATE CONCURRENT RESOLUTION NO. 4041
(Senators Solberg, Bowman, Tomac)
(Representatives Brown, Kempenich, Laughlin)
(Approved by the Delayed Bills Committee)

ROGER STUBER CONGRATULATED

A resolution congratulating Roger Stuber on his election as president of the National Cattlemen's Association.

WHEREAS, Roger Stuber, Bowman, North Dakota, is the owner and operator of Stuber Hereford Ranch; and

WHEREAS, Roger Stuber has held numerous leadership positions in the beef industry, including president of the American Hereford Association and president of the North Dakota Stockmen's Association; and

WHEREAS, Roger Stuber served on the National Cattlemen's Association Board of Directors from 1985 to 1988; and

WHEREAS, Roger Stuber has served as a National Cattlemen's Association regional vice president; and

WHEREAS, on January 30, 1993, Roger Stuber was installed as president of the National Cattlemen's Association; and

WHEREAS, as president of the National Cattlemen's Association, Roger Stuber will be a national spokesman for all segments of the United States beef cattle industry;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly extends its congratulations to Roger Stuber upon his election as president of the National Cattlemen's Association; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Roger Stuber.

Filed February 17, 1993

CHAPTER 748

SENATE CONCURRENT RESOLUTION NO. 4042
(Senator Mathern)
(Representative Svedjan)

UNIFORM GROUP INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of allowing all North Dakota residents to participate in the uniform group insurance program.

WHEREAS, the cost of obtaining health insurance is increasing rapidly and many North Dakota residents are finding it increasingly difficult to obtain affordable health insurance coverage; and

WHEREAS, it is estimated that up to 16 percent of the population of North Dakota does not have health insurance or has inadequate health insurance; and

WHEREAS, the Legislative Assembly has established the uniform group insurance program to promote the economy and efficiency of employment in the state service, reduce personnel turnover, and offer an incentive to well-qualified men and women to enter and remain in the service of state employment; and

WHEREAS, North Dakota residents not participating in the uniform group insurance program may be able to obtain favorable health insurance coverage if they could participate as a member of the uniform insurance program group;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of allowing all North Dakota residents to participate in the uniform group insurance program; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 749

SENATE CONCURRENT RESOLUTION NO. 4043
(Senator W. Stenehjem)

FAMILY COURT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a family court for the resolution of domestic relations cases for low income persons.

WHEREAS, more than one-half of all actions filed in district courts involve domestic relations cases, including divorce, separation, adult abuse, custody proceedings, support actions, adoptions, and paternity proceedings; and

WHEREAS, the present court system results in long delays and adversarial proceedings which many times ruin any chance of effective communication between the parents; and

WHEREAS, most low income persons must rely on overworked legal aid offices or attorneys willing to do pro bono domestic relations cases for legal services; and

WHEREAS, lack of ability to pay for legal services may result in a low income person staying in an abusive relationship, separating informally without the benefit of court-ordered support, or using other self-help measures to find relief; and

WHEREAS, North Dakota has a small claims court that uses procedures that are effective and result in a speedy resolution of disputes, often without the intervention of attorneys; and

WHEREAS, the types of services needed by low income persons in domestic relations cases could often be achieved using procedures similar to those used in the small claims court;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of establishing a family court for the resolution of domestic relations cases for low income persons, with emphasis on using informal procedures and on providing the court with jurisdiction to consider all domestic relations cases using the full range of services available in the community, including guardian ad litem services for minor children, counseling, addiction and substance abuse treatment programs, mediation, domestic violence protection orders, enforcement proceedings for child custody, support and visitation, modification proceedings, and juvenile court matters; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 10, 1993

CHAPTER 750

SENATE CONCURRENT RESOLUTION NO. 4044
(Senators Goetz, Andrist, Redlin)
(Representative Kempenich)

PARKS AND TOURISM DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study the implementation of the North Dakota historic sites, state parks, and tourism development plan and potential funding mechanisms for specific projects listed in the plan.

WHEREAS, the state's natural, cultural, historical, and recreational resources act as attractions to residents and nonresidents for the purpose of exploration, education, and entertainment; and

WHEREAS, the economic well-being of the state depends upon attracting nonresidents to the state; promoting tourism; keeping the natural, cultural, historical, and recreational resources in a condition that entices residents to stay in the state; and enhancing economic development within the state; and

WHEREAS, significant amounts of revenue are generated in the state as a result of the use of natural, cultural, historical, and recreational resources; and

WHEREAS, there is a recognized need for enhancement of the state's tourism resources to assure continued enjoyment by residents and nonresidents;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the implementation of the North Dakota historic sites, state parks, and tourism development plan and potential funding mechanisms for projects listed in the plan; and

BE IT FURTHER RESOLVED, that the Department of Economic Development and Finance, Parks and Tourism Department, State Historical Board, Game and Fish Department, Garrison Diversion Conservancy District, Office of Intergovernmental Assistance, related federal agencies, and various community groups, associations, and foundations provide any assistance requested by the Legislative Council to conduct this study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 751

SENATE CONCURRENT RESOLUTION NO. 4045
(Senators O'Connell, Graba, Traynor)
(Representatives Allmaras, Martin, Sveen)

POLITICAL SUBDIVISION RECORDS STUDY

A concurrent resolution directing the Legislative Council to study political subdivision record retention.

WHEREAS, North Dakota Century Code Chapter 54-46 requires the director of the Office of Management and Budget to adopt rules for a uniform system of cataloging, reproduction, retention, and final disposition of county, city, and park district records; and

WHEREAS, North Dakota Century Code Section 54-46-12 provides that all counties, cities, and park district offices, departments, and agencies may establish and maintain the uniform system prescribed by the director of the Office of Management and Budget; and

WHEREAS, the Office of Management and Budget has adopted rules in North Dakota Administrative Code Article 4-06 relating to county records management; and

WHEREAS, the rules appear to make the retention process for the counties mandatory rather than permissive as allowed by statute; and

WHEREAS, the rules make reference to, but do not contain, schedules, manuals, and reports that control the record retention and disposition process; and

WHEREAS, some political subdivision officials contend that political subdivisions are not allowed adequate input into the adoption of schedules under present procedures;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study present statutes and rules relating to the uniform system of cataloging, reproduction, retention, and final disposition of county records; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 752

SENATE CONCURRENT RESOLUTION NO. 4046
(Senator Heinrich)
(Representative Gates)

EDUCATIONAL SERVICE AREA STUDY

A concurrent resolution directing the Legislative Council to study geographical boundaries defining educational service areas.

WHEREAS, educational service delivery includes special education, vocational education, technology clusters and regions, teacher learning centers, and educational telecommunications regions; and

WHEREAS, delivery of the various educational services is often defined by geographical boundaries; and

WHEREAS, these geographical boundaries often have no relationship to one another; and

WHEREAS, coordinating the geographical boundaries within which services are delivered could improve service delivery, enhance efficiency, and ease administrative duties and responsibilities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the geographical boundaries defining educational service areas; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 753

SENATE CONCURRENT RESOLUTION NO. 4047
(Senator Bowman)

AUCTIONEER REAL ESTATE SALES STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of requiring real estate licensing for auctioneers selling or offering to sell real property at public auction.

WHEREAS, auctioneers selling real property at a bona fide public auction are exempt from the licensing requirements for real estate brokers and salespersons; and

WHEREAS, the Fifty-third Legislative Assembly considered legislation that would have removed the exemption for auctioneers from the real estate licensing law; and

WHEREAS, testimony indicated more information was needed, particularly related to the experience of other states concerning the relationship between real estate licensing and auctioneers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of requiring real estate licensing for auctioneers selling or offering to sell real property at public auction; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 754

SENATE CONCURRENT RESOLUTION NO. 4048
(Senators Tallackson, Robinson, Goetz)
(Representatives Coats, Kilichowski)

VETERANS' LONG-TERM CARE STUDY

A concurrent resolution directing the Legislative Council to study the long-term care needs of veterans and the use of state and other existing facilities for long-term care for veterans in North Dakota.

WHEREAS, life expectancy has increased and the need for both home and institutional services increase with age; and

WHEREAS, there are approximately 52,000 veterans in North Dakota; and

WHEREAS, the North Dakota Veterans' Home in Lisbon has a capacity of 150 beds; and

WHEREAS, there is a waiting list for people wishing admission to the North Dakota Veterans' Home; and

WHEREAS, building a long-term care facility for veterans has been proposed in western North Dakota; and

WHEREAS, there are a number of alternatives to long-term nursing home care for aged veterans, including respite care, adult basic care, and congregate care; and

WHEREAS, Medicaid reimbursement for veterans is subject to change; and

WHEREAS, the state has a number of facilities that may be better utilized by providing long-term care to veterans, including the Developmental Center at Grafton;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the long-term care needs of veterans in this state with an emphasis on state and other existing facilities that could be used for providing long-term care to veterans; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 755

SENATE CONCURRENT RESOLUTION NO. 4049
(Senators Nething, Kelly, Mushik, Nelson)

OPTIONAL MEDICAID PROGRAM STUDY

A concurrent resolution directing the Legislative Council to study the need for optional Medicaid programs and the impact of discontinuing those programs.

WHEREAS, the Legislative Assembly faced a budget gap in excess of $150 million during the 1993 session; and

WHEREAS, revenue measures were referred in 1989, resulting in major state agency and institution budget cuts; and

WHEREAS, many have suggested that the state should consider discontinuing optional Medicaid programs within the Department of Human Services to reduce state expenditures; and

WHEREAS, while the elimination of optional Medicaid programs may reduce state expenditures, county and other political subdivision expenditures may be increased as a result of eliminating those programs; and

WHEREAS, 70 percent federal matching is available if the programs are continued on the state level;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the need for optional Medicaid programs, the impact on political subdivisions and other state programs if optional Medicaid programs were to be discontinued, and accessibility of services for persons currently receiving them if the optional programs were discontinued; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 756

SENATE CONCURRENT RESOLUTION NO. 4050
(Senators Mushik, DeMers, Mathern, Scherber)
(Representatives Oban, D. Olsen)

DISABILITIES EDUCATION STUDY

A concurrent resolution directing the Legislative Council to study the placement of students with developmental disabilities in regular classroom settings and the teacher training curricula or specific study courses designed to assist teachers in accepting and teaching students with mental retardation and other developmental disabilities.

WHEREAS, Public Law 94-142 requires that a child with developmental disabilities be educated in the least restrictive environment and this is often interpreted to mean the regular classroom; and

WHEREAS, Public Law 94-142 requires that a child with developmental disabilities should be removed from the regular classroom only when the nature or severity of the disability is such that education in that setting cannot be achieved satisfactorily, even with the use of supplementary aids; and

WHEREAS, Public Law 94-142 requires that a child with developmental disabilities be educated in the school that the child would attend if not disabled, unless the child's individual education program requires an alternative placement; and

WHEREAS, since the enactment of Public Law 94-142, North Dakota special education districts have made varying degrees of progress with respect to placing and supporting children with developmental disabilities in regular classrooms; and

WHEREAS, teacher education and training, administrative knowledge, and exposure to inclusive education play major roles in implementing and facilitating the placement of students with developmental disabilities in regular classrooms;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the efforts of the Department of Public Instruction and individual special education districts to place and support students with developmental disabilities in regular classroom settings, to identify obstacles that hinder the inclusion of students in regular classrooms, and to receive information from state colleges and universities relative to teacher training curricula or specific study courses designed to assist teachers in accepting and teaching students with mental retardation and other developmental disabilities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 757

SENATE CONCURRENT RESOLUTION NO. 4051
(Senators Bowman, Evanson, Goetz)

EDUCATION PROVISION STUDY

A concurrent resolution directing the Legislative Council to study the various forms of education and the environments in which education is provided and the flexibility of legislative and administrative systems for reviewing and evaluating different methods of providing education.

WHEREAS, the state of North Dakota has a duty to ensure that all children receive a quality education; and

WHEREAS, the Legislative Assembly and the Superintendent of Public Instruction have set various standards and criteria in the exercise of this duty; and

WHEREAS, the education of children can take many different forms and occur in many different environments; and

WHEREAS, these forms and environments are not always anticipated by either the Legislative Assembly or the Superintendent of Public Instruction; and

WHEREAS, forms and environments of education not anticipated by either the Legislative Assembly or the Superintendent of Public Instruction must not be routinely disallowed, but must be examined in light of the educational success being achieved;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the various forms of education and the environments in which education is provided and the flexibility of legislative and administrative systems for reviewing and evaluating different methods of providing education, with full consideration given to the welfare of the student; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 758

SENATE CONCURRENT RESOLUTION NO. 4052
(Senators Holmberg, Evanson, Maxson)

CHILD ABUSE ACCUSATIONS STUDY

A concurrent resolution directing the Legislative Council to study accusations of child abuse or child sexual abuse by one parent against the other during contested custody and visitation cases.

WHEREAS, national research studies suggest that allegations by one parent against another of child abuse or child sexual abuse occur in contested child custody and visitation cases; and

WHEREAS, North Dakota Century Code Chapter 50-25.1 requires the reporting of certain child abuse or neglect to the Department of Human Services for investigation and determination; and

WHEREAS, allegations of child abuse or child sexual abuse may also arise in pleadings during divorce proceedings; and

WHEREAS, unfounded allegations of child abuse or child sexual abuse may impose substantial expense and injury to innocent parties; and

WHEREAS, other states appear to provide varied remedies when allegations of child abuse or child sexual abuse are made during divorce proceedings; and

WHEREAS, it is a legislative responsibility to review existing laws to ensure that statutes address significant societal issues;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the impact of allegations of child abuse or child sexual abuse by one party against another while gathering information for divorce proceedings and during divorce proceedings and the desirability of adopting legislation regarding visitation and custody of either parent during investigation of allegations of child abuse or child sexual abuse and following determination of those allegations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 759

SENATE CONCURRENT RESOLUTION NO. 4053
(Senators Holmberg, Heinrich, Evanson)
(Representatives Gates, Kroeber, Kunkel)

HANDICAPPED ACCESS TO SCHOOLS STUDY

A concurrent resolution directing the Legislative Council to study the application of federal law prohibiting discrimination against the handicapped to school districts.

WHEREAS, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against qualified handicapped persons in any program or activity that receives federal financial assistance; and

WHEREAS, a qualified handicapped person means a person who with reasonable accommodation can perform the essential functions of a job in question; and

WHEREAS, reasonable accommodation means making facilities readily accessible and usable by handicapped persons; and

WHEREAS, the school districts of this state would benefit from a discussion of Section 504 requirements and from a development of policies addressing the requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the application of federal law prohibiting discrimination against the handicapped, Section 504 of the Rehabilitation Act of 1973, to school districts in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 760

SENATE CONCURRENT RESOLUTION NO. 4054
(Senators Evanson, Marks, Nelson)
(Representatives Glassheim, Stenson, Thorpe)

CABLE TV REGULATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of state regulation of the cable television industry.

WHEREAS, the cable television industry is a multimillion dollar business in this state which is not subject to competition in most markets; and

WHEREAS, in 1984 Congress preempted state and local regulation of cable television with respect to rates, services, and ownership; and

WHEREAS, in 1992 Congress reimposed rate control on cable systems, required establishment of cable service standards, and otherwise retreated from the deregulation of 1984; and

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992 mandates a system of joint federal and local regulation of cable television; and

WHEREAS, a determination needs to be made of the extent the state can regulate cable television; and

WHEREAS, if the state becomes involved in the regulation of cable television services, a determination needs to be made as to whether involvement should be by a state agency such as the Public Service Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of state regulation of the cable television industry; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 761

SENATE CONCURRENT RESOLUTION NO. 4055
(Senators Robinson, Mushik, Nething)
(Representatives Gates, Gulleson, Rydell)

CHILDREN SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the provision of services for children, including services related to child care, education, health, corrections, and foster care.

WHEREAS, the state of North Dakota provides education, health, and well-being programs for children and the federal government makes funding available for programs that benefit children; and

WHEREAS, North Dakota is investing in economic development and new jobs; and

WHEREAS, these jobs will result in the need for more quality child care facilities; and

WHEREAS, Minnesota is considering the consolidation of the majority of its children's services into one state agency; and

WHEREAS, state and national children's organizations, including the Children's Defense Fund and the National Association for the Education of Young Children, offer assistance to states in developing service systems for children; and

WHEREAS, the availability of child care services has an impact on the economic development opportunities in the state; and

WHEREAS, the quality of the services, the compensation of persons involved in providing the services, and the affordability of the services to parents and to state and federal governments must be considered in developing services for children; and

WHEREAS, the Governor's Commission on Children and Adolescents at Risk studied services to children and has written the Children and Adolescents at Risk report;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study, using the Children and Adolescents at Risk report as a guide, the provision of services for children, including child care, education, health, corrections, foster care, and other services involving the well-being of children for the purpose of developing a seamless delivery system for children's services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 762

SENATE CONCURRENT RESOLUTION NO. 4056
(Senators Keller, Freborg, Goetz)
(Representatives Bodine, Grosz, Tollefson)

LIGNITE DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study tax, regulatory, marketing, and other business incentives that can be enacted by the state of North Dakota to maintain and encourage development of our state's abundant lignite resources.

WHEREAS, North Dakota's lignite industry annually produces approximately thirty million tons of lignite, contributing to our state's and nation's energy independence by generating electricity for more than two million people and by producing synthetic natural gas for 300,000 homes and businesses, which is equivalent to over 20,000 barrels of domestic oil per day; and

WHEREAS, North Dakota's lignite industry generates over 17,000 direct and indirect jobs, over one billion dollars in annual business volume, and over sixty million dollars in annual tax revenue for our state; and

WHEREAS, the lignite research, development, and marketing program enacted by the Legislative Assembly and administered by the Industrial Commission has marketing studies underway to identify strategies for increased development and additional uses of our state's 1,000-year supply of lignite coal; and

WHEREAS, various state tax, regulatory, and marketing incentives to enhance lignite development which could result in increased jobs, economic activity, and tax revenue for our state are being identified and evaluated by the Lignite Research Council;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study tax, regulatory, marketing, and other related business incentives that could be adopted by the State of North Dakota to maintain and encourage development of its lignite resources, for both existing and future uses; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to utilize the services of the Lignite Research Council, an advisory group to the Industrial Commission; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 763

SENATE CONCURRENT RESOLUTION NO. 4057
(Senators DeMers, Mushik, Nalewaja, W. Stenehjem)
(Representatives Glassheim, Kretschmar)

CHILD SUPPORT ENFORCEMENT STUDY

A concurrent resolution directing the Legislative Council to study the Uniform Interstate Family Support Act and its relationship to existing North Dakota law to determine the desirability of adopting it.

WHEREAS, the Uniform Reciprocal Enforcement of Support Act was enacted in 1950, amended in 1951, 1958, and 1968, and has been used as a guide throughout the United States for child support enforcement; and

WHEREAS, child support enforcement is a growing problem that needs new mechanisms for interstate enforcement; and

WHEREAS, new principles have evolved in the last several years which allow the states to better solve the enforcement problem; and

WHEREAS, in 1992 the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Interstate Family Support Act that was a product of the new developments and principles being used to solve interstate child support enforcement problems; and

WHEREAS, the Uniform Interstate Family Support Act is a comprehensive Act that can be used to enforce spousal support awards as well as child support awards; and

WHEREAS, it is a legislative responsibility to review laws to ensure that they are modern, understandable, and efficient and that they properly address the problems they are intended to rectify;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the Uniform Interstate Family Support Act and its relationship to existing North Dakota law and determine the desirability of adopting the Act; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 764

SENATE CONCURRENT RESOLUTION NO. 4058
(Senators B. Stenehjem, Freborg, Mathern)
(Representatives Dorso, Payne)

STATE HOSPITAL STUDY

A concurrent resolution directing the Legislative Council to study the programming offered at the North Dakota State Hospital at Jamestown and the relationship of the programming to the community-based services offered throughout the state, and to include in the study an audit of the admissions procedures of the North Dakota State Hospital.

WHEREAS, the State Hospital at Jamestown was established under Article IX, Section 12, of the Constitution of North Dakota; and

WHEREAS, the State Hospital serves the mentally ill, including persons suffering from drug and alcohol addiction; and

WHEREAS, the State Hospital furnishes food, shelter, treatment, and support to the mentally ill to assist in restoring their mental health or alleviating their illness or suffering; and

WHEREAS, many of the services provided by the State Hospital are available within the communities in this state; and

WHEREAS, application for admission to the State Hospital must be made through regional human service centers with limited exceptions; and

WHEREAS, as of December 26, 1992, the State Hospital patient population included 53 people who were referred from unknown sources;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the programming offered at the North Dakota State Hospital and the relationship of the programming to the community-based services offered throughout the state, and include in that study an audit of the admissions procedures of the State Hospital; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 765

SENATE CONCURRENT RESOLUTION NO. 4059
(Senators Tallackson, Nelson, Wogsland)
(Representatives Freier, Oban)

STATE OFFICE SPACE STUDY

A concurrent resolution directing the Legislative Council to study state agency office space needs, with emphasis on evaluation of whether rental of office space is the best use of state resources.

WHEREAS, the State of North Dakota rents office space for several of its agencies and institutions; and

WHEREAS, the state must constantly evaluate future needs for office space and the best means of meeting those needs; and

WHEREAS, long-term implications of rental of office space versus construction of buildings to provide office space must be evaluated to assure that the best use is made of state resources available for meeting office space needs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study state office space needs, with emphasis on evaluation of whether rental of office space is the best use of state resources; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 766

SENATE CONCURRENT RESOLUTION NO. 4060
(Senators DeMers, Nalewaja)
(Representatives Oban, Price)

HOME HEALTH SERVICE STUDY

A concurrent resolution directing the Legislative Council to study the statutory definition of home health agency and home health services and develop a solution to the problems and confusion that may arise due to the state registry requirements.

WHEREAS, patients in need of health care may prefer to remain in their own homes or in group home settings during times of illness; and

WHEREAS, in-home care is becoming more readily available to residents of this state; and

WHEREAS, competency evaluation of an assistant to the nurse to practice in a home health care setting is required by the federal Omnibus Budget Reconciliation Act of 1989; and

WHEREAS, the definition of "home health agency" as contained in North Dakota Administrative Code Section 33-03-10-01 (4) and (6) does not encompass all providers of home health services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the statutory definition of home health agency and home health services and develop a solution to the problems and confusion that arise due to the state registry requirements; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 767

SENATE CONCURRENT RESOLUTION NO. 4061
(Senators Kelly, DeMers, Thane)
(Representatives Rydell, Svedjan)

HEALTH CARE FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the study by the North Dakota Health Task Force in exploring the control of costs and the redistribution of dollars toward improved access to services through a health care reimbursement system.

WHEREAS, the most significant trend in North Dakota's population has been the movement of people from rural to urban areas and the outmigration of people, particularly in the middle-aged categories; and

WHEREAS, it is expected that 60 percent of the state's population will reside in eight counties in the year 2000; and

WHEREAS, 80 percent of the state's 53 counties are within a federally designated health professional shortage area; and

WHEREAS, the per capita spending for health care in North Dakota in 1990 was $2,661, which was the seventh highest per capita spending in the nation; and

WHEREAS, the North Dakota Health Task Force received a grant of approximately $671,000 from the Robert Wood Johnson Foundation to study health care financing systems and health care provision mechanisms; and

WHEREAS, any reforms within the health care delivery system must assure reasonable access to quality, cost-effective, reasonable prices and appropriate health care services for all North Dakotans with an increased emphasis on primary care and prevention; and

WHEREAS, there are several different entities responsible for the provision and payment of health care services to North Dakotans, including medical assistance, private health insurance plans, employer-sponsored group health insurance plans, the Comprehensive Health Association of North Dakota and the workers' compensation system; and

WHEREAS, any study of health care should consider the possibility of pooling the many different sources from which health care financing is derived;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of pooling all sources of funding for health care benefits in conjunction with the study by the North Dakota Health Task Force in exploring the control of costs and the redistribution of dollars toward improved access to services through a health care reimbursement system; and

BE IT FURTHER RESOLVED, that the North Dakota Health Task Force provide consultation to facilitate the study by the Legislative Council; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, along with any legislation required to implement those recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 768

SENATE CONCURRENT RESOLUTION NO. 4062
(Senators Kelsh, Kinnoin)

WEED STUDY

A concurrent resolution directing the Legislative Council to study the adequacy of current noxious weed laws, regulations, and control efforts.

WHEREAS, during the 1977-78 and 1979-80 interims the Legislative Council's Agriculture Committee reviewed noxious weed laws and recommended legislation establishing county weed boards as the primary noxious weed control authorities in the state; and

WHEREAS, during the 1991-92 interim the Legislative Council's Natural Resources Committee studied the desirability of adopting an integrated pest management law and recommended legislation allowing county weed boards to control pests as well as weeds; and

WHEREAS, despite current laws, regulations, and control efforts, the number of acres with noxious weed infestation doubles every 10 years; and

WHEREAS, continued study is necessary to review all avenues available to control and eradicate noxious weeds;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the adequacy of current noxious weed laws, regulations, and control efforts; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 769

SENATE CONCURRENT RESOLUTION NO. 4063
(Senators Mushik, DeMers, Lindaas, Nething)
(Representatives Rydell, Mutzenberger)

WOMEN'S CORRECTIONAL FACILITY STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds.

WHEREAS, the existing women's correctional facility is on the grounds of the State Penitentiary; and

WHEREAS, the State Penitentiary is in need of additional space for inmates; and

WHEREAS, numerous problems have occurred along with corresponding cost increases because the State Penitentiary has both male and female inmates at the same location; and

WHEREAS, a separate correctional facility for women off the State Penitentiary grounds may be less expensive; and

WHEREAS, there may be unused space at other state institutions which could be converted at a lower cost than the cost of new construction for a women's correctional facility;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council conduct a study to determine the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 770

SENATE CONCURRENT RESOLUTION NO. 4064
(Senators Mushik, Nelson, Wogsland)
(Representatives Hausauer, Oban)

AGENCY REPORT STUDY

A concurrent resolution directing the Legislative Council to study the desirability and necessity of requiring various state agencies to prepare and publish annual or biennial reports, including an analysis of the cost of preparing, printing, and distributing the reports.

WHEREAS, various state agencies, departments, and institutions are required by law to prepare and publish annual or biennial reports to the Governor and the Legislative Assembly; and

WHEREAS, the contents of the reports may be of limited assistance to the Governor and the Legislative Assembly and much of the information contained in the reports may be available from other sources; and

WHEREAS, numerous reports, scattered throughout the North Dakota Century Code without uniform reporting requirements, are required of state agencies; and

WHEREAS, it may be more practical, efficient, and effective for reporting requirements to be contained in one section of the North Dakota Century Code;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the desirability and necessity of requiring various state agencies to prepare and publish annual or biennial reports, including an analysis of the cost of preparing, printing, and distributing the reports; and

BE IT FURTHER RESOLVED, that the Legislative Council study the feasibility and desirability of placing all state agency report requirements in one section of the North Dakota Century Code; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 771

SENATE CONCURRENT RESOLUTION NO. 4065
(Senators Dotzenrod, Graba, Lindgren)

HOME RULE STUDY

A concurrent resolution directing the Legislative Council to study the relationship of state, county, and city government to determine the feasibility and desirability of expanding autonomy of counties and cities through statewide county and city home rule.

WHEREAS, since territorial days county and city governments have operated within the confines of laws enacted by the Legislative Assembly and under traditional court interpretations of local government powers, to the effect that a county or city has only those powers expressly granted by state law or necessarily implied from the grant and any doubt as to the existence of a power must be resolved against the existence of that power; and

WHEREAS, changing conditions necessitate pleas to the Legislative Assembly when state law must be created or amended to allow counties or cities to take action to meet new conditions; and

WHEREAS, a goal of a constitutional amendment approved by the voters in 1982 was to provide for "maximum local self-government by all political subdivisions" and legislation has provided for optional adoption of county and city home rule charters; and

WHEREAS, enactment of state law that provides a basic framework of home rule for all counties and cities, which may be altered by electors of each county or city, may be desirable, on a permanent basis or on a four-year trial basis; and

WHEREAS, thorough study of the relationship of the state and its counties and cities is needed to compare current law and the potential benefits of expanded autonomy under home rule and to review laws of other states and recommendations of national organizations which may offer guidance;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the relationship of state, county, and city government to determine the feasibility and desirability of expanding the autonomy of counties and cities through statewide county and city home rule; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 772

SENATE CONCURRENT RESOLUTION NO. 4066
(Senators Robinson, Kelsh)
(Representatives Gerntholz, Laughlin)

AGRICULTURAL PARITY PRICE STUDY

A concurrent resolution directing the Legislative Council to study the impact on the state's economy of parity prices for various agricultural commodities.

WHEREAS, the economic viability of the agricultural sector is directly dependent upon the ability of individual producers to secure a reasonable rate of return on their investments and a reasonable price for their commodities; and

WHEREAS, the economic viability of the agricultural sector directly impacts the livelihood of many North Dakota residents and the state's tax revenues; and

WHEREAS, the economic viability of the agricultural sector affects its ability to produce essential foods for domestic and foreign consumption;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the impact on the state's economy of parity prices for agricultural commodities, including wheat, corn, soybeans, sugar, rice, barley, grain sorgum, dry edible beans, oats, sunflowers and other oilseed crops, beef, pork, poultry, eggs, fruits, nuts, vegetables, cotton and other fiber crops, and milk; and

BE IT FURTHER RESOLVED, that North Dakota State University shall furnish such information and render such assistance to the Legislative Council as the Council may request; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Council forward its report to all members of the North Dakota Congressional Delegation.

Filed March 22, 1993

CHAPTER 773

SENATE CONCURRENT RESOLUTION NO. 4067
(Senators Mushik, Evanson, Kelly, Lindgren)
(Representatives Kaldor, Rydell)

SINGLE PARENT INDEPENDENCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of developing a program to assist single parents and their children in becoming independent of the social service system.

WHEREAS, the number of children born to single mothers in North Dakota, in 1991, was at the highest rate recorded; and

WHEREAS, the number of children born to single mothers and the percentage of births to single mothers continues to increase each year for all age groups and races; and

WHEREAS, 50.4 percent of single mothers in this state lived below the poverty level in 1990; and

WHEREAS, children born to single mothers are at greater risk of living in poverty and of having difficulty in school than children born to a married couple; and

WHEREAS, the increasing rate of pregnancies of single women has grave implications for North Dakota due to increased demands for social and educational services coupled with the likely prospect of a generation less able to compete in the world economy;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of developing a program to assist single parents and their children in becoming independent of the social service system; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 774

SENATE CONCURRENT RESOLUTION NO. 4068
(Senators Tomac, Krauter)

MEDICAL ASSISTANCE AND TAX POLICY STUDY

A concurrent resolution directing the Legislative Council to study gift and estate tax laws and their relationship to medical assistance payments.

WHEREAS, persons of advanced age or poor health may transfer their assets to friends and relatives to render themselves eligible for medical assistance payments; and

WHEREAS, medical assistance payments are a substantial expenditure of public expenditures and the state should examine whether changes in the application of gift and estate tax laws could reduce the expenditure of state funds for medical assistance payments; and

WHEREAS, the intent of laws providing for medical assistance payments is that assistance should be available only for those who are unable to pay and laws should provide a better means for distinguishing those who are able to pay their own medical expenses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study gift and estate tax laws and their relationship to medical assistance payments; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 775

SENATE CONCURRENT RESOLUTION NO. 4070
(Senators Mushik, Andrist, Yockim)

NONPROFIT CORPORATION LAWS STUDY

A concurrent resolution directing the Legislative Council to study open records, open meetings, and bidding laws for nonprofit corporations and organizations.

WHEREAS, open records and open meetings have long been established as a matter of public policy in North Dakota; and

WHEREAS, statutes enacted in 1957 provide that all governmental meetings and records must be open and accessible to the public except as otherwise specifically provided by law; and

WHEREAS, the voters of this state have approved constitutional amendments mandating open governmental meetings and open public records, subject to statutory exceptions; and

WHEREAS, there remains confusion concerning the types of records and meetings of nongovernmental groups that are open to the public; and

WHEREAS, a number of nonprofit corporations and organizations receive a direct allocation of public funds and expend those public funds for a wide variety of purposes; and

WHEREAS, certain nonprofit corporations or organizations may have meaningful and legitimate reasons for claiming an exception to open meeting and record provisions; and

WHEREAS, there is a need to recognize conflicting rights in certain areas of governmental activity, particularly those dealing with information regarding the expenditure of public funds;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to study the subject of open meetings, open records, and bidding laws for nonprofit corporations and organizations, including a review of all nonprofit corporations and organizations that expend public funds; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance of representatives of the North Dakota media, nonprofit corporations and organizations, and state and local governments to assist with the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 7, 1993

CHAPTER 776

SENATE CONCURRENT RESOLUTION NO. 4071
(Senators Scherber, Holmberg, Krauter)
(Representatives Boucher, Porter, Ring)

MILITARY FACILITY CLOSURE STUDY

A concurrent resolution directing the Legislative Council to study and monitor the social economic impact of defense-related downsizing, closures, and loss of federal contracts.

WHEREAS, three military installations, located at Cavalier, Finley, and Dickinson; six defense contractors - Turtle Mountain Manufacturing, Northrop Dakota Manufacturing, Lucas Western, Sioux Manufacturing, Turtle Mountain Corporation, and Mandaree Electric Corporation; and numerous National Guard armories may be adversely affected by closure or loss of federal contracts in the next two years; and

WHEREAS, local communities and the Department of Economic Development and Finance may be involved in assessing the social economic impacts stemming from cutbacks or closures; and

WHEREAS, the Department of Economic Development and Finance may be called upon to assist in mitigating the impacts of defense cutbacks in affected North Dakota communities; and

WHEREAS, our local communities and the Department of Economic Development and Finance may access federal economic conversion moneys to cope with economic problems caused by possible declines in defense spending;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study and monitor the social economic impact of defense-related downsizing, closures, or loss of federal contracts during the interim; receive reports from the Department of Economic Development and Finance regarding federal funding for economic conversion; and receive reports from the Department of Economic Development and Finance, regions, and communities on efforts made to assist in economic conversion and diversification; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed March 22, 1993

CHAPTER 777

SENATE CONCURRENT RESOLUTION NO. 4072
(Senators Nelson, Wogsland)
(Approved by the Delayed Bills Committee)

GARRISON DIVERSION STATE ROLE

A concurrent resolution urging the Garrison Diversion Conservancy District, with the cooperation of the State Water Commission, the Governor, the Garrison Diversion Overview Committee, and each member of the North Dakota Congressional Delegation, to attempt to negotiate promptly, with the appropriate federal officials, a greater role for the state in the development, construction, operation, and maintenance of the Garrison Diversion Project.

WHEREAS, the state of North Dakota was first promised a 1,000,000-acre multiple purpose water project in the historic Pick-Sloan compromise, which led to the Flood Control Act of December 22, 1944 [58 Stat. 887]; and

WHEREAS, the Act of August 5, 1965 [79 Stat. 433] authorized the initial phase of the Garrison Diversion Unit which promised 250,000 acres of irrigation, fish and wildlife, municipal and rural water supplies, recreation, and other benefits for the state of North Dakota; and

WHEREAS, the Garrison Diversion Project was substantially modified by the Garrison Diversion Unit Reformulation Act of 1986 [100 Stat. 418] and project benefits to the state of North Dakota were significantly reduced; and

WHEREAS, federal officials have consistently promised the state of North Dakota that the United States would promptly develop the Garrison Diversion Unit if the state would accept a smaller project and if the state would pay an ever increasing share of project costs; and

WHEREAS, the state of North Dakota has already contributed 550,000 acres of land for Pick-Sloan reservoirs so that downstream states may receive flood control, water supply, recreation, hydroelectric, and navigation benefits; and

WHEREAS, during the past 49 years, the state of North Dakota and North Dakota Indian tribes have fully contributed their share of the Pick-Sloan compromise and have incurred substantial social, financial, economic, and environmental costs, but the anticipated benefits have not been forthcoming; and

WHEREAS, the Garrison Diversion Unit will provide a capability to stabilize Devils Lake and fulfill the Indian Trust; and

WHEREAS, the Garrison Diversion Unit will provide thousands of acres of irrigation, which is essential to support a stable livestock industry and to diversify North Dakota agriculture into nonsurplus crop production; and

WHEREAS, over 100 rural communities have applied for assistance in developing water supplies which meet the federal water quality standards; and

WHEREAS, through the cooperation and efforts of the state of North Dakota, the wetland and the fish and wildlife mitigation programs are substantially ahead of project development; and

WHEREAS, continued federal delay of key features, such as a connecting facility between the McClusky and New Rockford canals, will virtually assure that the project will remain nonfunctional, will preclude the state from receiving promised benefits, and will seriously reduce the potential for economic advances in North Dakota's future; and

WHEREAS, all elements of the program are to be considered interdependent and, thus, developed and maintained concurrently; and

WHEREAS, the state of North Dakota is committed to completion of the Principal Supply Works to provide initial deliveries of Missouri River waters to the Sheyenne, Red, and James Rivers, and the Devils Lake basin by the year 2000; and

WHEREAS, the Legislative Assembly anticipates a potential need for the state of North Dakota and the Garrison Diversion Conservancy District to assume a greater role in developing, constructing, operating, and maintaining the Garrison Diversion Project; and

WHEREAS, the Legislative Assembly also anticipates a potential need for the state of North Dakota to enter agreements with the United States to complete key project features or to assume title to project features in order to assure that the project is not abandoned by the United States;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly urges the Garrison Diversion Conservancy District, with the cooperation of the State Water Commission, the Governor, the Garrison Diversion Overview Committee, and each member of the North Dakota Congressional Delegation, to work together to investigate and explore, with the appropriate federal officials, all reasonable means to assure the development, construction, operation, and maintenance of the Garrison Diversion Project in a timely manner, and to continue the diplomatic and working relationships with the neighboring provinces in order to identify a satisfactory means of solving our mutual water supply problems; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the board of directors of the Garrison Diversion Conservancy District, the State Water Commission, the Governor, the Garrison Diversion Overview Committee, and each member of the North Dakota Congressional Delegation.

Filed April 13, 1993

CHAPTER 778

SENATE CONCURRENT RESOLUTION NO. 4073
(Senator Goetz)
(Approved by the Delayed Bills Committee)

ROUGHRIDER INDUSTRIES STUDY

A concurrent resolution directing the Legislative Council to study the cost effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector.

WHEREAS, Roughrider Industries manufactures a complete line of office furniture, metal products, street and highway signs, and vehicle license plates, all of which may be candidates for production and sale by the private sector; and

WHEREAS, Roughrider Industries is planning on expanding its furniture manufacturing division to produce a line of furniture that would be mainly available exclusively to retailers and has additional plans to expand to out-of-state markets; and

WHEREAS, the economic climate of the state and recent budgetary constraints necessitate an evaluation of the cost effectiveness of products produced by Roughrider Industries which may be in direct competition with products produced by the private sector; and

WHEREAS, careful consideration and study should be given before the public sector expands its product production capabilities that are in direct competition with private sector production capabilities; and

WHEREAS, inmate labor has a long history in American corrections and state correctional industries vary across the nation and are worthy of review; and

WHEREAS, there may be alternative concepts of rehabilitation available to the state rather than permitting Roughrider Industries to continue or expand its present operations;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the cost effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector including a review of the mission of Roughrider Industries, correctional industries in other states, and the cost components and pricing structure of prison manufactured products; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 13, 1993

CHAPTER 779

SENATE CONCURRENT RESOLUTION NO. 4074
(Senators Nalewaja, Grindberg, Kelly, Lindgren, Mathern, Nelson, Scherber, Tennefos)
(Representatives Nelson, Gorman, Austin, Belter, J. Berg, R. Berg, Bernstein, Brodshaug, A. Carlson, Christopherson, Dalrymple, Dorso, Holm, Payne, Pyle, Soukup)
(Approved by the Delayed Bills Committee)

BISON WOMEN'S BASKETBALL CHAMPIONS

A concurrent resolution congratulating the North Dakota State University Bison women's basketball team for winning the 1993 NCAA Division II national championship.

WHEREAS, the North Dakota State University Bison women's basketball team captured the NCAA Division II championship by scoring a record 95 points while racking up a decisive victory in the championship game; and

WHEREAS, members of the North Dakota State University Bison women's basketball team were honored with numerous individual awards including the Division II women's basketball coach of the year award for Bison coach Amy Ruley, most valuable player of the national championship tournament for the second time in her career and all-American honors for Nadine Schmidt, all-American honors for Jody Buck, and an all-American nomination for Jackie Parsley, and the seniors on this year's team have compiled an amazing 115-13 record while winning two national championships in their four seasons to establish a tradition of excellence for the North Dakota State University Bison women's basketball program; and

WHEREAS, this team, distinguished by individual awards and talented individual athletes, displayed exemplary teamwork and sharing in pursuit of its goal that was realized by winning the 1993 NCAA Division II women's basketball championship and compiling a season record of 30 wins and two losses, a performance of which North Dakotans are extremely proud;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-third Legislative Assembly takes pride in extending to all members and coaches of the North Dakota State University Bison women's basketball team its heartiest congratulations for winning the 1993 NCAA Division II women's national basketball championship; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to each member of the North Dakota State University Bison women's basketball team, to each of their coaches, and to the president of North Dakota State University, home of the Bison.

Filed April 7, 1993

CHAPTER 780

SENATE CONCURRENT RESOLUTION NO. 4075
(Senators Keller, Graba, Nalewaja)
(Representatives Nichols, Tollefson, Stenehjem)
(Approved by the Delayed Bills Committee)

LAW ENFORCEMENT AND EMERGENCY SERVICE STUDY

A concurrent resolution directing the Legislative Council to study methods for funding state, county, and city law enforcement, correctional, and emergency medical technician training facilities and programs and the feasibility and desirability of establishing centralized training for law enforcement, correctional, emergency medical assistance personnel, and other emergency service providers.

WHEREAS, adequate training facilities and programs are essential to ensuring the competence and professionalism of law enforcement, correctional, and emergency assistance officials; and

WHEREAS, current training facilities lack sufficient housing, office space, and areas for emergency vehicle and physical training and this often requires the search for and use of substitute facilities, the availability of which cannot be depended upon; and

WHEREAS, the future needs for training peace officers, game wardens, parole and probation officers, correctional officers, Bureau of Criminal Investigation agents, Highway Patrol officers, and emergency medical technicians in this state may require increased funding and the methods for providing adequate funding are uncertain; and

WHEREAS, a centralized training agency and facility for law enforcement, correctional, and emergency medical assistance personnel may be a desirable way to promote effective and efficient training for state, county, and city personnel;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods for funding law enforcement training facilities and programs and the feasibility and desirability of establishing centralized training for law enforcement, correctional, emergency medical assistance personnel, and other emergency service providers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-fourth Legislative Assembly.

Filed April 20, 1993

HOUSE MEMORIAL RESOLUTION

CHAPTER 781

HOUSE MEMORIAL RESOLUTION NO. 7001
(Memorial Resolutions Committee)

HOUSE MEMBERS MEMORIAL

A memorial resolution for deceased members of the House of Representatives of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

SCOTT ANDERSON, who served in the 36th Legislative Assembly, from District 23, died November 3, 1991;

MILON AUSTIN, who served in the 38th Legislative Assembly, from District 49, and the 40th through the 43rd Legislative Assemblies, from District 38, died January 8, 1992;

WESLEY P. BELTER, who served in the 40th and 41st Legislative Assemblies, from District 22, died February 13, 1992;

CARL H. BOUSTEAD, who served in the 39th Legislative Assembly, from District 27, and in the 40th through the 42nd Legislative Assemblies, from District 32, died January 7, 1992;

KAY CANN, who served in the 44th Legislative Assembly, from District 21, died November 7, 1992;

ALLWIN DeGROOT, who served in the 42nd Legislative Assembly, from District 29, died March 6, 1993;

WILLIAM DeKREY, who served in the 40th through the 42nd Legislative Assemblies, from District 31, died December 23, 1992;

ALOHA EAGLES, who served in the 40th through the 45th Legislative Assemblies, from District 21, and the 46th through the 48th Legislative Assemblies, from District 46, died February 22, 1992;

FLOYD E. ETTESTAD, who served in the 32nd through the 35th and the 38th Legislative Assemblies, from District 34, died November 11, 1991;

PEDER J. FLATEN, who served in the 23rd Legislative Assembly, from District 3, died July 24, 1991;

CARL J. FREEMAN, who served in the 40th and 41st Legislative Assemblies, from District 6, died October 11, 1991;

KENNETH GRONHOVD, who served in the 35th through the 39th Legislative Assemblies, from District 16, died February 23, 1992;

ERNEST R. HAFNER, who served in the 31st through the 34th Legislative Assemblies, from District 48, died March 27, 1991;

ARVID E. HEDSTROM, who served in the 46th, 47th and 49th Legislative Assemblies, from District 23, died May 11, 1991;

THEODORE W. HOFFER, who served in the 34th Legislative Assembly, from District 23, died June 16, 1991;

MELVIN H. HOLTE, who served in the 22nd through the 24th Legislative Assemblies, from District 10, died August 17, 1991;

GUY F. LARSON, who served in the 33rd and 34th Legislative Assemblies, from District 27, died May 4, 1991;

LeROY M. LARSON, who served in the 41st and 42nd Legislative Assemblies, from District 21, died March 1, 1993;

GORDEN PAULSON, who served in the 32nd through the 35th Legislative Assemblies, from District 33, died November 2, 1992;

JAMES A. PETERSON, who served in the 40th through the 45th Legislative Assemblies, from District 5, and the 46th through the 51st Legislative Assemblies, from District 40-50, died July 17, 1992;

VINCENT B. RIEGER, who served in the 38th and the 39th Legislative Assemblies, from District 42, died December 22, 1991;

ROYDEN D. RUED, who served in the 43rd through the 45th Legislative Assemblies, from District 5, and the 46th through the 48th Legislative Assemblies, from District 40-50, died May 15, 1992;

STANLEY SAUGSTAD, who served in the 33rd through the 38th Legislative Assemblies, from District 29, and the 40th Legislative Assembly, from District 7, died August 17, 1992;

ARTHUR C. SORTLAND, who served in the 32nd through the 35th Legislative Assemblies, from District 38, died April 2, 1992; and

HARRY A. THOMPSON, who served in the 34th Legislative Assembly, from District 27, died February 24, 1992; and

WHEREAS, we now pause to mourn the passing of our former House colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased representatives.

Filed March 24, 1993

HOUSE CONCURRENT MEMORIAL RESOLUTION

CHAPTER 782

HOUSE CONCURRENT MEMORIAL RESOLUTION NO. 7501
(Representatives Freier, Oban)
(Senators Wogsland, Nelson, Goetz)

GOVERNOR MICKELSON MEMORIAL

A concurrent memorial resolution in memory of South Dakota Governor George Mickelson.

WHEREAS, Almighty God in His infinite wisdom has called from our midst an outstanding citizen of the state of South Dakota, George Mickelson, the Governor of the state of South Dakota; and

WHEREAS, Governor Mickelson has served his country and state as a member of the United States Armed Forces and Assistant State Attorney General; and

WHEREAS, Governor Mickelson's devoted service to his state included three terms in the South Dakota House of Representatives, one of which he served as Speaker, and two terms as South Dakota Governor, the second of which he was serving at the time of his passing; and

WHEREAS, Governor Mickelson was a friend and good neighbor to North Dakota, as well as a confidant of past and present governors of this state; and

WHEREAS, Governor Mickelson's keen understanding of history and the fundamental principles of state government resulted in a respect for, and appreciation of, the role of the executive, legislative, and judicial branches of government which was evident to all members of each branch and which was evidenced by acts of assistance and courtesy to the citizens of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-third Legislative Assembly of the state of North Dakota expresses its keen and personal sorrow over the passing of Governor George Mickelson and on behalf of the citizens of the state expresses its deepest appreciation for the outstanding contributions made to this state, the state of South Dakota, and the nation by Governor George Mickelson; and

BE IT FURTHER RESOLVED, that the Secretary of State forward an enrolled copy of this resolution to the family of South Dakota Governor George Mickelson.

Filed April 21, 1993

SENATE MEMORIAL RESOLUTION

CHAPTER 783

SENATE MEMORIAL RESOLUTION NO. 8001
(Memorial Resolutions Committee)

SENATE MEMBERS MEMORIAL

A memorial resolution for deceased members of the Senate of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

EDWARD DOHERTY, who served in the 41st and 42nd Legislative Assemblies, from District 13, died January 13, 1992;

AGNES GEELAN, who served in the 32nd and 33rd Legislative Assemblies, from District 14, died March 10, 1993;

WILBUR H. KLUSMANN, who served in the 32nd and 33rd Legislative Assemblies, from District 30, died November 26, 1991;

GUY F. LARSON, who served in the 35th and 36th Legislative Assemblies, from District 27, and the 40th through the 42nd Legislative Assemblies, from District 32, died May 4, 1991;

NICHOLAS "NICK" M. SCHMIT, JR., who served in the 33rd and 34th Legislative Assemblies, from District 37, died March 29, 1990;

I. E. "ESKY" SOLBERG, who served in the 43rd through the 45th Legislative Assemblies, from District 32, and the 46th and 47th Legislative Assemblies, from District 49, died July 25, 1992; and

WHEREAS, we now pause to mourn the passing of our former Senate colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that the Secretary of State present enrolled copies of this resolution to the surviving families of these deceased senators.

Filed March 29, 1993