

# GENERAL PROVISIONS

## CHAPTER 51

### SENATE BILL NO. 2046

(Legislative Council)

(Judiciary Committee)

(Senators W. Stenehjem, Traynor, Watne)

(Representatives Kretschmar, Brown, D. Johnson)

### TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact subsection 4 of section 10-19.1-129, sections 11-04-01, 11-18-14, subsection 1 of section 14-07.3-01, subsection 4 of section 15-27.6-13, subsection 10 of section 15-29-08, section 15-37-01, subsection 1 of section 15-45-02, subsection 1 of section 15-47-27.2, sections 15-47-46, 16.1-16-02, subsection 5 of section 20.1-03-04, section 23-01-03, subsection 4 of section 23-03-07, section 24-01-13, subsection 13 of section 25-01.3-06, subsection 6 of section 26.1-08-01, section 26.1-41-07, subsection 4 of section 26.1-47-01, section 26.1-48-02, subsection 3 of section 27-01-10, section 28-20.1-02, subsection 1 of section 28-20.1-03, subdivision q of subsection 1 of section 28-32-01, subsection 7 of section 30.1-10-03, section 35-21-01, subsection 6 of section 37-27-01, subsection 5 of section 38-08-04, subsection 3 of section 39-04-19, subsection 9 of section 41-09-28, sections 42-03-01, 42-03-03, subsection 1 of section 45-22-03, section 46-05-01, subsection 2 of section 47-02-27.5, section 50-06-01.8, subdivision a of subsection 4 of section 54-52-17, and section 54-56-01 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 29-01-32, 32-03-19, and 32-03-26 of the North Dakota Century Code, relating to obsolete provisions relating to damages for breach of promise to marry and seduction.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section ~~10-19.1-02.2~~ 10-23-02.2, service may be made according to subsection 2.

**SECTION 2. AMENDMENT.** Section 11-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-04-01. Selection of candidates for permanent county seat at primary election.** When the temporary county seat of any county has been designated by ~~the~~

~~governor under section 11-02-04, or by the board of county commissioners under section 11-03-07, the question of the permanent location of such county seat may be voted upon at any primary election for the purpose of selecting candidates to be voted upon at the general election.~~

**SECTION 3. AMENDMENT.** Section 11-18-14 of the North Dakota Century Code is amended and reenacted as follows:

**11-18-14. Register of deeds to remove and destroy certain documents - Records to be made.** The register of deeds in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in the register's office, and destroy, all ~~seed liens, chattel mortgages, threshing or drying liens, crop production liens, combining liens,~~ agricultural processor's liens, agricultural supplier's liens, agister's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the ~~same instrument~~ upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the register of deeds shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the ~~same instrument~~ was destroyed.

**SECTION 4. AMENDMENT.** Subsection 1 of section 14-07.3-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Counseling center" means a domestic violence organization as defined in section ~~14-07.1-18~~ 14-07.1-01.

**SECTION 5. AMENDMENT.** Subsection 4 of section 15-27.6-13 of the North Dakota Century Code is amended and reenacted as follows:

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~~ education standards and practices board to serve as a teacher in a particular class or subject area.

**SECTION 6. AMENDMENT.** Subsection 10 of section 15-29-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. To contract with, employ, and pay all teachers in the schools and, for cause, to dismiss or suspend any teacher when the interests of the school may require it. Except as provided in section 15-29-08.4, every teacher must hold a valid North Dakota teaching certificate issued by the ~~superintendent of public instruction~~ education standards and practices board. No person who is related to any member of the board by blood or marriage may be employed as a teacher without the concurrence of two-thirds of the board.

**SECTION 7. AMENDMENT.** Section 15-37-01 of the North Dakota Century Code is amended and reenacted as follows:

**15-37-01. Teacher's oath.** Every person who applies for a certificate to teach in any of the public schools of the state shall subscribe to the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of North Dakota, and that I will faithfully discharge the duties of my position, according to the best of my ability.

The oath or affirmation must be executed in duplicate, and one copy thereof must be filed with the ~~superintendent of public instruction~~ education standards and practices board when the application for a certificate is made, and the other copy must be retained by the person who subscribes to such oath or affirmation. No certificate may be issued unless a duly witnessed or notarized oath or affirmation has been filed.

**SECTION 8. AMENDMENT.** Subsection 1 of section 15-45-02 of the North Dakota Century Code is amended and reenacted as follows:

1. All kindergarten teachers must hold valid certificates issued under rules adopted by the ~~superintendent of public instruction~~ education standards and practices board as provided in chapter 15-36.

**SECTION 9. AMENDMENT.** Subsection 1 of section 15-47-27.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The term "teacher", as used in this section, means a contracted state employee holding a professional certificate and certified by the ~~superintendent of public instruction~~ education standards and practices board to teach in this state, whose primary task is to provide direct instruction in a classroom, or on an individualized basis, and whose work schedule must be in accordance with the school calendar, guidance counselors, school librarians, itinerant outreach teachers, and vocational and other technological resource personnel who are required to meet the same teaching and certification requirements. ~~Superintendents~~ The term does not include superintendents, assistant superintendents, principals, supervisory personnel, substitutes, and all paraprofessionals ~~are not included in this definition.~~

<sup>1</sup> **SECTION 10. AMENDMENT.** Section 15-47-46 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-47-46. Teacher qualification - Kindergarten through grade eight - Exceptions.**

1. Except as provided in subsections 2 through 4 or section 15-29-08.4, all teachers teaching kindergarten through grade eight must hold a teaching certificate and:
  - a. A minimum of a kindergarten endorsement to teach kindergarten;
  - b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or

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<sup>1</sup> Section 15-47-46 was also amended by section 1 of House Bill No. 1402, chapter 184.

- c. An endorsement in kindergarten or elementary education from the superintendent of public instruction education standards and practices board attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses prescribed by the superintendent of public instruction education standards and practices board.
2. A teacher who holds a teaching certificate and a major or an endorsement in middle school education attained prior to, or within two years of, the assignment to teach middle school may teach grades five through eight.
3. A teacher who holds a teaching certificate and a major or minor in the course area or field in which the teacher is teaching may teach grades seven and eight.
4. A teacher who holds a teaching certificate from the education standards and practices board and meets the requirements of the superintendent of public instruction may teach special education, foreign language, art, music, physical education, and computer education in kindergarten through grade eight.

**SECTION 11. AMENDMENT.** Section 16.1-16-02 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-16-02. Who may contest election.** A defeated candidate or ten qualified electors may contest the nomination or election of any person or the approval or rejection of any question or proposition submitted to a vote of the electorate, pursuant to chapters 16.1-04, 16.1-05, 16.1-06, 16.1-07, ~~16.1-08~~ 16.1-08.1, 16.1-09, 16.1-10, and 16.1-11. In a county election to change the county seat or to change the boundaries of the county, the complaint must be filed against the board of county commissioners, who shall appear and defend the contest action.

**SECTION 12. AMENDMENT.** Subsection 5 of section 20.1-03-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Residents may fish without a resident fishing license ~~or trout and salmon license stamp~~ on free fishing days. The date of these free fishing days may be set by proclamation by the governor.

**SECTION 13. AMENDMENT.** Section 23-01-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-01-03. Powers and duties of the health council.** The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.
2. Make rules and regulations for the government of the council and its officers and meetings.

3. Establish standards, rules, and regulations which are found necessary for the maintenance of public health, including sanitation and disease control.
4. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records. No rule may be adopted with respect to building construction of existing medical hospitals or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.
5. Hold hearings on all matters brought before it by applicants and licensees of medical hospitals with reference to the denial, suspension, or revocation of licenses and make appropriate determination as specified herein.
6. ~~Regulate the expansion of long-term care facilities and services through the certificate of need process under chapter 23-17.2.~~

The council may direct the state health officer to do or cause to be done, any or all of the things which may be required in the proper performance of the various duties placed upon the state department of health.

**SECTION 14. AMENDMENT.** Subsection 4 of section 23-03-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Enforce cleanliness in schools, and inspect overcrowded, poorly ventilated, and unsanitary schoolhouses and, when necessary, report cases of unsanitary or unsafe school buildings to the county board of health for investigation ~~as provided in section 15-47-23.~~

**SECTION 15. AMENDMENT.** Section 24-01-13 of the North Dakota Century Code is amended and reenacted as follows:

**24-01-13. Enforcement of highway laws - Vehicle size and weight controlled.**

The director and each officer and inspector of the department, designated by ~~him,~~ shall enforce the provisions of chapter 49-18, and has the director, have general police powers with respect to enforcement of all laws pertaining to the use of motor vehicles and trailers, other than passenger cars and motorcycles, upon the highways, roads, and streets of this state and may:

1. Classify highways and enforce limitations as to weight and load of vehicles thereon as provided for under section 39-12-01.
2. Issue special written permits authorizing the operation of oversized or overweight vehicles as provided for under section 39-12-02.
3. Prohibit the operation, or may impose restrictions on vehicular use of highways during certain seasons of the year as provided for under section 39-12-03.

**SECTION 16. AMENDMENT.** Subsection 13 of section 25-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

13. Contract with any person, public or private, to carry out any responsibilities of the project under this chapter and ~~sections~~ section 25-01-01.1; ~~50-26-01, 50-26-03, 50-26-04, and 50-27-03.~~

<sup>2</sup> **SECTION 17. AMENDMENT.** Subsection 6 of section 26.1-08-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Insurance company" means a company or organization operating pursuant to chapter 26.1-17, ~~26.1-18~~ 26.1-18.1, or 26.1-36 and offering or selling accident and health insurance policies or health care or health service contracts. The term does not include a health service corporation operating under chapter 26.1-17 which does not write hospital or medical service contracts.

**SECTION 18. AMENDMENT.** Section 26.1-41-07 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-41-07. Persons not entitled to benefits.** Basic or optional excess no-fault benefits are not payable to or on behalf of any person who is injured while:

1. Occupying any motor vehicle without the expressed or implied consent of the owner or while not in lawful possession of the motor vehicle.
2. Occupying a motor vehicle owned by such person which is not insured for the benefits required by this chapter unless uninsured solely because the insurance company of the owner has not filed a form pursuant to subsection 2 of section 26.1-41-05 to provide the basic no-fault benefits required by this chapter.
3. During a racing or speed contest, or in practicing or preparing for a racing or speed contest.
4. Intentionally causing or attempting to cause injury to oneself or another person.

**SECTION 19. AMENDMENT.** Subsection 4 of section 26.1-47-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section ~~26.1-18-01~~ 26.1-18.1-01, and a fraternal benefit society as defined in section ~~26.1-15-01~~ 26.1-15.1-02.

**SECTION 20. AMENDMENT.** Section 26.1-48-02 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>2</sup> Section 26.1-08-01 was also amended by section 1 of House Bill No. 1168, chapter 251.

**26.1-48-02. North Dakota aftermarket risk contract.** The sale of aircraft and aircraft components sold by an aviation manufacturer and the performance of any modification, maintenance, alteration, repair, or installation of components in aircraft in this state are governed by an aftermarket risk contract. The contract between the seller or aviation ~~manager~~ manufacturer and the purchaser must be executed at the time of purchase and reconsidered at each subsequent resale. The first and subsequent seller or aviation manufacturer shall agree to be bound by North Dakota law and the aftermarket risk contract or to provide a fully paid aftermarket product liability insurance policy that covers exposure to tort liability within the United States. The option of providing the insurance policy applies only to aircraft or aircraft components that sell for more than two thousand dollars.

**SECTION 21. AMENDMENT.** Subsection 3 of section 27-01-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The governing body of the county or city may determine the amount of the fee to be assessed in all cases or it may authorize the district or municipal judge to determine the amount of the fee to be assessed in each case. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The ~~county~~ district or municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a ~~county~~ district or municipal court under this section must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to one or more of the following programs as determined by the governing body:
  - a. A private, nonprofit domestic violence or sexual assault program.
  - b. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

**SECTION 22. AMENDMENT.** Section 28-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**28-20.1-02. Filing and status of foreign judgments.** A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any district court ~~or county court~~ of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court ~~or county court~~ of any county of this state and may be enforced or satisfied in like manner.

**SECTION 23. AMENDMENT.** Subsection 1 of section 28-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. At the time of filing of the foreign judgment, the judgment creditor or ~~his~~ the judgment creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post-office address of the judgment ~~creditor~~ debtor and otherwise complying with section 28-20-15.

<sup>3</sup> **SECTION 24. AMENDMENT.** Subdivision q of subsection 1 of section 28-32-01 of the 1995 Supplement to 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 ~~and rules implementing chapter 45-22.~~

**SECTION 25. AMENDMENT.** Subsection 7 of section 30.1-10-03 of the North Dakota Century Code is amended and reenacted as follows:

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~~ of 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.

**SECTION 26. AMENDMENT.** Section 35-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**35-21-01. Release of lien by undertaking authorized.** When any mechanic's lien, garage storage lien, repairman's lien, ~~seed lien, sugar beet production lien, crop production lien, threshing lien,~~ agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

**SECTION 27. AMENDMENT.** Subsection 6 of section 37-27-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Resident" means a person who has filed a resident North Dakota income tax return for the year prior to May 3, 1993, 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;

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<sup>3</sup> Section 28-32-01 was also amended by section 1 of Senate Bill No. 2398, chapter 449; section 7 of Senate Bill No. 2033, chapter 182; section 8 of Senate Bill No. 2336, chapter 157; section 1 of House Bill No. 1042, chapter 278; section 6 of Senate Bill No. 2045, chapter 115; section 1 of House Bill No. 1183, chapter 451; and section 2 of House Bill No. 1158, chapter 277.



- 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~~ twelve-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 chapter 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 May 3, 1993.

<sup>4</sup> **SECTION 28. AMENDMENT.** Subsection 5 of section 38-08-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and ~~of subsections 4, 4, 5, 6, and 8 of section 57-51.1-04~~ the commission's responsibilities under chapter 57-51.1.

**SECTION 29. AMENDMENT.** Subsection 3 of section 39-04-19 of the 1995 Supplement to the North Dakota Century Code as effective until June 30, 2000, is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. ~~4904~~ 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

**SECTION 30. AMENDMENT.** Subsection 3 of section 39-04-19 of the 1995 Supplement to the North Dakota Century Code as effective after June 29, 2000, is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. ~~4904~~ 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or

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<sup>4</sup> Section 38-08-04 was also amended by section 1 of House Bill No. 1194, chapter 317.

pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

**SECTION 31. AMENDMENT.** Subsection 9 of section 41-09-28 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes liens for ~~threshing~~; crop or agricultural product processing; ~~crop production~~; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for ~~such~~ the security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state or in the office of the register of deeds in any county in this state a form prescribed by the secretary of state which contains the information prescribed by the secretary of state under section 41-09-41 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.

**SECTION 32. AMENDMENT.** Section 42-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**42-03-01. When dogs are a public nuisance.** Any dog that habitually molests ~~persons~~ a person traveling peaceably on the public road; or street; is a public nuisance. Upon written complaint; ~~in writing~~; made to a county district or municipal judge; ~~containing a description of such~~ describing the dog, and giving ~~his~~ the name of the dog and ~~that of his~~ the dog's owner; if known, and, if not, so stating, and alleging that ~~such~~ the dog is a public nuisance, the county district or municipal judge shall give notice to the dog's owner ~~of such dog~~ that a complaint has been filed ~~in his office~~ that ~~such~~ the dog has been molesting certain persons and that the owner shall take the necessary action to prevent the dog from any further violations of this chapter. If the county district or municipal judge receives a further complaint regarding ~~such~~ the dog after notice has been given ~~to the owner~~ that ~~his dog has been molesting certain people~~ under this section, the county or municipal judge shall issue a summons, if ~~such~~ the owner is known, commanding ~~him~~ the owner to appear before the county or municipal judge at his office at a time ~~therein stated~~; in the same manner as other county or municipal judge court summonses.

**SECTION 33. AMENDMENT.** Section 42-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**42-03-03. Hearing - Judgment - Execution.** On the day of hearing the county district or municipal judge shall hear the evidence in the case; ~~and~~; if ~~he shall find therefrom~~. If the judge finds that such the dog is a public nuisance, ~~he shall enter judgment~~ must be entered accordingly, and ~~thereupon~~ the judge shall order any peace officer to kill and bury the dog, which order the peace officer shall forthwith execute.

<sup>5</sup> **SECTION 34. AMENDMENT.** Subsection 1 of section 45-22-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. In determining whether the underlying general partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section ~~45-14-04~~ 45-14-02 apply.

**SECTION 35. AMENDMENT.** Section 46-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**46-05-01. Newspapers qualified to do legal printing - File copies with historical society - Publishing notices in adjoining county.** Before any newspaper in this state is qualified to publish any legal notice or any matter required by law to be printed or published in some newspaper in the state, or any public notice for any political subdivision within this state, ~~such~~ the newspaper must:

1. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
2. Be nonsectarian and printed at least three-fourths in English; and
3. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing ~~second class mail~~ periodicals mailing privileges for at least one year.

In the county where no newspaper having the above-prescribed qualifications is published, any newspaper at the county seat of ~~said~~ that county is entitled to publish ~~such~~ the legal notices even though it may not have been established one year. The owner or publisher of each legal newspaper shall send to the state historical board, to ~~such~~ the address as ~~must be~~ designated by the secretary ~~thereof~~, two copies of each issue of ~~such~~ the newspaper. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper published in an adjoining county and having a general circulation in ~~said~~ the county.

**SECTION 36. AMENDMENT.** Subsection 2 of section 47-02-27.5 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If a contingent property interest or a power of appointment was created before July 1, 1991, and is determined in a judicial proceeding, commenced on or after July 1, 1991, to violate this state's rule against perpetuities as that rule existed before July 1, 1991, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable ~~it~~ when the contingent property interest or power of appointment was created.

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<sup>5</sup> Section 45-22-03 was also amended by section 224 of Senate Bill No. 2344, chapter 103.

<sup>6</sup> **SECTION 37. AMENDMENT.** Section 50-06-01.8 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**50-06-01.8. Department to seek waiver to establish welfare reform demonstration project - Interim rulemaking.** The department of human services shall seek, from appropriate federal officials, authorization to establish a demonstration project to combine the benefits provided under the state's aid to families with dependent children, fuel assistance, and food stamp programs, pursuant to title IV-A of the Social Security Act [42 U.S.C. 601 et seq.], the low-income home energy assistance program [42 U.S.C. 8621-8629], and the Food Stamp Act [7 U.S.C. 2011-2027]. The demonstration project established under this section must provide for uniform and consistent treatment of income and assets in determining eligibility; provide for the creation of a uniform method of budgeting and computing benefits, a consistent certification period for the receipt of benefits, and uniform reporting requirements; provide for necessary child care to allow a participant to meet educational and employment goals; and provide for universal employment and training to assist individuals in becoming self-sufficient. The project may be administered notwithstanding the requirements of subsections 4 and 5 of section ~~50-04-09~~ 50-01.2-03, section 50-03-07, subsections 17 and 19 of section 50-06-05.1, chapter 50-09, and section 50-11.1-11.1, relating to the administration of the aid to families with dependent children, fuel assistance, and food stamp programs, except that a county shall reimburse the state for expenditures for the aid to families with dependent children program in that county as required by section 50-09-21. The demonstration project may require any participant to cooperate with child support enforcement efforts. The department of economic development and finance, job service North Dakota, county social service boards, and any other state agency determined appropriate, shall cooperate with the department to ensure the success of the project. Local government agencies within the demonstration project counties are encouraged to cooperate with the department. Rules adopted to implement the demonstration project may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and the interim final rules may take effect on a date no earlier than the date of filing with the legislative council of the notice of proposed adoption of a rule required by subsection 4 of section 28-32-02.

<sup>7</sup> **SECTION 38. AMENDMENT.** Subdivision a of subsection 4 of section 54-52-17 of the 1995 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 seventy-four hundredths percent of final average salary multiplied by the number of years of service employment.

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<sup>6</sup> Section 50-06-01.8 was also amended by section 51 of House Bill No. 1226, chapter 404, and section 52 of House Bill No. 1226, chapter 404.

<sup>7</sup> Section 54-52-17 was also amended by section 1 of House Bill No. 1137, chapter 463, and section 2 of House Bill No. 1137, chapter 463.

- (2) Prior service benefit equals one and seventy-four hundredths percent of final average salary multiplied by the number of years of prior service employment.
- (3) All participants who retired before January 1, 1994, are entitled to benefits calculated at one and seventy-four hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning January 1, 1994.

<sup>8</sup> **SECTION 39. AMENDMENT.** Section 54-56-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**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 executive director of job service North Dakota or a designee of the executive director, 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 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.

**SECTION 40. REPEAL.** Sections 32-03-19 and 32-03-26 of the North Dakota Century Code and section 29-01-32 of the 1995 Supplement to the North Dakota Century Code are repealed.

Approved April 8, 1997  
Filed April 8, 1997

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<sup>8</sup> Section 54-56-01 was also amended by section 9 of Senate Bill No. 2014, chapter 43.

## CHAPTER 52

### HOUSE BILL NO. 1065

(Legislative Council)  
 (Judiciary Committee)  
 (Representatives Kretschmar, Nottestad)  
 (Senators W. Stenehjem, Traynor, LaFountain)

### ACTS PERFORMED ON SATURDAYS

AN ACT to amend and reenact section 1-03-05 and subsection 1 of section 16.1-01-09 of the North Dakota Century Code, relating to acts performed on Saturdays and business days.

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

**SECTION 1. AMENDMENT.** Section 1-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**1-03-05. Act due on Saturday or holiday performed on next day.** Whenever an act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, ~~which that~~ that falls upon a Saturday or a holiday, ~~such the~~ the act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

<sup>9</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 16.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

1. a. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure; the printed name, signature, and address of the committee member; and notarization of the signature.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement ~~which must that~~ fairly represent ~~represents~~ the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.

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<sup>9</sup> Section 16.1-01-09 was also amended by section 1 of Senate Bill No. 2044, chapter 188.

- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.

Approved January 31, 1997

Filed January 31, 1997

**CHAPTER 53****SENATE BILL NO. 2365**

(Senators Sand, Lips)  
(Representatives Coats, Gorder, Hausauer)

**FOUR CHAPLAINS SUNDAY**

AN ACT to create and enact section 1-03-12 of the North Dakota Century Code, relating to the designation of Four Chaplains Sunday.

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

**SECTION 1.** Section 1-03-12 of the North Dakota Century Code is created and enacted as follows:

**Four Chaplains Sunday.** Each year the governor shall issue a proclamation designating the first Sunday of February as Four Chaplains Sunday in honor of the four United States army chaplains, George L. Fox, Alexander D. Goode, Clark V. Poling, and John P. Washington, who sacrificed their own lives to save the lives of other servicemen on the Dorchester, a United States army troop transport ship that was sunk off the coast of Greenland on February 3, 1943.

Approved March 21, 1997

Filed March 21, 1997



## CHAPTER 54

### SENATE BILL NO. 2071

(Finance and Taxation Committee)  
(At the request of the Tax Commissioner)

## ELECTRONICALLY FILED DOCUMENTS

AN ACT to create and enact a new section to chapter 1-08 and a new subsection to section 57-51-06 of the North Dakota Century Code, relating to alternative methods of signing, subscribing, or verifying documents and oil and gas tax returns; and to amend and reenact sections 57-38-31, 57-38-32, subsection 3 of section 57-39.2-11, sections 57-43.1-04, 57-43.1-16, and 57-43.2-12 of the North Dakota Century Code, relating to alternative methods of signing, subscribing, or verifying income, sales, use, motor vehicle fuels, and special fuels tax returns.

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

**SECTION 1.** A new section to chapter 1-08 of the North Dakota Century Code is created and enacted as follows:

Alternative methods of signing, subscribing, or verifying documents filed by electronic means. A state agency, as defined in section 32-12.1-02, charged by law with the duty of receiving signed, subscribed, or verified documents may accept such documents filed by electronic means, including telecommunications. The secretary of state shall adopt rules in the manner provided in chapter 28-32 to govern methods for signing, subscribing, or verifying documents filed by electronic means, except documents filed with the tax commissioner. A signature on a document filed by electronic means which is accepted by the state agency and complies with the rules of the secretary of state has the same validity and consequence as the actual signature and written declaration for a paper document.

**SECTION 2. AMENDMENT.** Section 57-38-31 of the North Dakota Century Code is amended and reenacted as follows:

#### **57-38-31. Duty of individuals and fiduciaries to make return.**

1. Every resident individual, every fiduciary for a resident individual, estate, or trust, who is required by the provisions of the United States Internal Revenue Code of 1954, as amended, to file a federal income tax return, and every individual or fiduciary who receives income derived from sources in this state, shall file an income tax return with the state tax commissioner in such form as the commissioner may prescribe. Any person who is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any person required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, with respect to income that is exempt from taxation under this chapter either because it cannot be constitutionally taxed or because it is exempt by any provision of law

- shall file a return prescribed by the tax commissioner in such form as will permit computation of the tax liability under this chapter on only that part of the income which is subject to taxation pursuant to the provisions of this chapter; provided, that such person elects to use that form of return rather than any other form of return that may be prescribed. The return must be signed by the person required to make it and must contain a written declaration that it is made and subscribed under penalties of perjury.
2. The same filing status and deduction method used by a husband and wife when filing federal income tax returns must be used when filing state income tax returns. If either spouse is a resident and the other is a nonresident, separate state income tax returns must be filed.
  3. If the taxpayer is unable to make ~~his~~ the taxpayer's own return, the return must be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.
  4. Every fiduciary subject to taxation under the provisions of this chapter shall make a return for the individual, estate, or trust for which ~~he~~ the fiduciary acts; the return must be signed by the person required to make it and must contain a written declaration that it is made and subscribed under penalties of perjury.
  5. The return made by a fiduciary must state such facts as the tax commissioner may prescribe.
  6. A fiduciary required to make a return under this chapter is subject to all of the provisions of the chapter which apply to an individual.
  7. ~~The~~ If required by the tax commissioner, the return must be accompanied by a true copy of the federal income tax return of the taxpayer or by equivalent information ~~on forms furnished and under regulations promulgated~~ in the form and manner prescribed by the state tax commissioner if required by the tax commissioner, or a. A true copy of the federal income tax return of the taxpayer or equivalent information must be furnished to the tax commissioner by the taxpayer or fiduciary at any time after ~~he has filed~~ filing of the return required by this chapter if so required by the tax commissioner.
  8. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

**SECTION 3. AMENDMENT.** Section 57-38-32 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-32. Duty of corporations to make returns.** Each corporation that receives income from the sources designated in section 57-38-30, whether or not required to file an income tax return pursuant to the provisions of the United States Internal Revenue Code of 1954, as amended, shall, unless exempted by the provisions of section 57-38-09, make a return in such form as the tax commissioner may prescribe, stating specifically such facts as the tax commissioner may require for the purpose of making any computation required by this chapter. Any corporation

which is required to file a state income tax return but not required to compute a federal taxable income figure for federal income tax purposes is required to compute such a federal taxable income figure using a pro forma return pursuant to the provisions of the Internal Revenue Code of 1954, as amended, in order to determine a starting point for the computation of state income tax. Any foreign loan and investment company engaged in business in this state, and whose income in this state consists solely of income exempt from taxation under this chapter, need not file an annual report unless specially requested to do so by the tax commissioner, but may file in lieu thereof an affidavit claiming exemption under this chapter. The return must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act and it and any other declaration, statement, or document required to be made must contain or be verified by a written declaration that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

**SECTION 4. AMENDMENT.** Subsection 3 of section 57-39.2-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Returns must be signed by the retailer or a duly authorized agent of the retailer and must contain a written declaration that they are made and subscribed under the penalties of this chapter. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

<sup>10</sup> **SECTION 5. AMENDMENT.** Section 57-43.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-04. Form of claim for refund.** A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The refund claim must state that the motor vehicle fuel was used or is to be used by the claimant other than in motor vehicles operated or intended to be operated upon the public highways of this state, the manner in which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original invoice or invoices indicating the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. If the original invoice or invoices are lost, the claimant may substitute duplicate invoices plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets.

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<sup>10</sup> Section 57-43.1-04 was also amended by section 4 of House Bill No. 1311, chapter 498.

**SECTION 6. AMENDMENT.** Section 57-43.1-16 of 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 liability 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 tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. 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 7. AMENDMENT.** Section 57-43.2-12 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-12. Monthly returns and payments.** Each special fuel dealer shall file with the commissioner on forms prescribed by the commissioner a monthly tax return to determine the amount of liability for the tax imposed by this chapter. The returns must contain a written declaration that they are made and subscribed under the penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return. The return must show, with reference to each location at which special fuel is sold, delivered, or placed by the dealer, such information as the commissioner may reasonably require for the proper administration and enforcement of this chapter. The special fuel dealer shall file the return on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. The reports are considered filed on time if mailed in an envelope properly addressed to the commissioner and postmarked before midnight of the final filing date. The commissioner may, for good cause, grant a taxpayer a reasonable extension of time for filing a return. Each special fuel dealer shall compute the tax imposed by this chapter by multiplying the rate of tax per gallon [3.79 liters] by the number of gallons [liters] of special fuel sold or delivered to special fuel users. The monthly tax return must be accompanied by remittance covering the tax due on special fuels sold or delivered to special fuel users during the preceding month.

<sup>11</sup> **SECTION 8.** A new subsection to section 57-51-06 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a return filed by electronic means, including telecommunications, that shall have the same validity and consequence as the actual signature and written declaration for a paper return.

Approved April 2, 1997

Filed April 3, 1997

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<sup>11</sup> Section 57-51-06 was also amended by section 1 of Senate Bill No. 2155, chapter 501.